Supreme Court, U.S.
FILED
AUG 19 1991
OFFICE OF THE CLERK

91-307

No. _____

In The

Supreme Court of the United States

October Term, 1991

CITRUS COUNTY, FLORIDA,

Petitioner,

v.

JOE REDNER, THOMAS GEORGE SECCHAIRI, PHYLLIS PATRICK, TAMMY BENARD, and AMANDA OLIVER,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

RUSSELL W. LAPEER
Counsel of Record
and
ROBERT R. WHEELER
PATTILLO & MCKEEVER, P.A.
Post Office Box 1450
Ocala, Florida 32678
(904) 732-2255

Attorneys for Petitioner, Citrus County, Florida

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

I. Whether the Full Faith and Credit Act, 28 U.S.C. § 1738, requires the federal courts (below), where Respondents challenged two adult-entertainment licensing ordinances, on the same constitutional grounds, to accord to the identical provisions of a successor, permanent licensing ordinance, containing a severability clause, the same preclusive effect, under Florida law, from a final judgment of the Florida courts, which upheld the constitutionality of the earlier, temporary, licensing ordinance.

II. Whether under the *Rooker-Feldman* doctrine, the federal courts (below) lack jurisdiction to consider Respondents' challenges to the constitutionality of identical provisions in a successor, permanent adult-entertainment licensing ordinance, containing a severability clause, when those challenges are "inextricably intertwined" with the issues raised by Respondents in state-court criminal proceedings that resulted in a final judgment upholding the constitutionality of the same provisions in the earlier, temporary licensing ordinance.

PARTIES TO PROCEEDINGS BELOW

In addition to Petitioner (who was an appellee below), and Respondents (who were appellants below), Skip Hudson, Alex Griffin, William F. Broska, and Nick Bryant,[1] the individual commissioners of the Board of County Commissioners, of Citrus County, Florida; and Charles S. Dean, the Sheriff of Citrus County, Florida, were appellees below. The Eleventh Circuit Court of Appeals affirmed the district court's dismissal of the individual commissioners on the basis of their absolute legislative immunity, and the dismissal of the sheriff at the conclusion of trial.[2] That affirmance is not an issue in this petition for writ of certiorari.

---

[1] One other individual, John Barnes, a private citizen, was named as a defendant in the district court, and his name appears as a nominal appellee in the court below. Respondents (as plaintiffs in the district court) did not effect service of process, so that personal jurisdiction could be acquired over him; and he has never been a party to any of the proceedings in any of the courts below.

[2] *Redner v. Citrus County, Fla.*, 919 F.2d 646, 648 n.3 (11th Cir. 1990).

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO PROCEEDINGS BELOW ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW AND BASIS OF JURISDICTION .. 1

CONSTITUTIONAL, STATUTORY, AND ORDINANCE PROVISIONS 1

STATEMENT OF THE CASE 5

ARGUMENT 5

REASONS FOR ISSUING THE WRIT OF CERTIORARI 5

I. THE FULL FAITH & CREDIT ACT REQUIRES THE COURT OF APPEALS TO AFFIRM THE DISTRICT COURT'S ABSTENTION, AND PRECLUDES RELITIGATION OF RESPONDENTS' CONSTITUTIONAL CHALLENGES TO THE PROVISIONS OF 88-06 (THE LATER, PERMANENT LICENSING ORDINANCE), WHICH ARE IDENTICAL TO 88-05 (THE EARLIER, TEMPORARY LICENSING ORDINANCE) 5

A. The District Court's Abstention from the Merits of Respondents' Challenges to 88-05 was Mandatory under the Younger v. Harris Doctrine 5

B. The Provisions of 88-06, Which are Identical to 88-05, are Severable 8

C. The District Court's Abstention from the Merits of Respondents' Challenges to the Identical Provisions in 88-06 was Equally Mandatory, Under Younger v. Harris 12

TABLE OF CONTENTS

Page

D. Finality of the State-Court Judgment on Respondents' Constitutional Challenges to 88-05 Precludes Relitigating Those Same Challenges to the Identical Provisions of 88-06 16

E. The Florida Law of Collateral Estoppel Applies Now to Bar (Preclude) Relitigation of Respondents' Same Constitutional Attacks Upon the Identical Provisions in 88-06 19

II. THE ROOKER-FELDMAN DOCTRINE REQUIRES THE COURT OF APPEALS TO AFFIRM THE DISTRICT COURT'S ABSTENTION, AND FORBIDS FEDERAL LITIGATION OF RESPONDENTS' CONSTITUTIONAL CHALLENGES TO THE PROVISIONS OF 88-06 (THE LATER, PERMANENT LICENSING ORDINANCE), BECAUSE THEY ARE INEXTRICABLY INTERTWINED WITH THE STATE-COURT JUDGMENT REJECTING THOSE CONSTITUTIONAL CHALLENGES TO THE IDENTICAL PROVISIONS OF 88-05 (THE EARLIER, TEMPORARY LICENSING ORDINANCE) 23

CONCLUSION 27

CERTIFICATE OF SERVICE 28

TABLE OF AUTHORITIES

Page

CASES

Allen v. McCurry, 449 U.S. 90, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980) 16

Allstate Ins. v. Cruse, 734 F.Supp. 1574 (M.D. Fla. 1989) 20

ASARCO, Inc. v. Kadish, 490 U.S. 605, 109 S.Ct. 2037, 104 L.Ed.2d 696 (1989) 25

Atlantic Coast Line RR. Co. v. Locomotive Engineers, 398 U.S. 281, 90 S.Ct. 1739, 26 L.Ed.2d 234 (1970) 24

Ballard v. Wilson, 856 F.2d 1568 (5th Cir. 1988) 13

Berman v. Florida Bd. of Bar Examiners, 794 F.2d 1529 (11th Cir. 1986) 24

Blonder-Tongue Laboratories, Inc. v. University of Ill. Foundation, 402 U.S. 313, 91 S.Ct. 1434 19

Blue Cross & Blue Shield of Md., Inc. v. Weiner, 868 F.2d 1550 (11th Cir.), *cert. denied*, ___ U.S. ___, 110 S.Ct. 239, 107 L.Ed.2d 190 (1990), 108 L.Ed.2d 612 24

Brockett v. Spokane Arcades, Inc., 472 U.S. 491, 105 S.Ct. 2794, 86 L.Ed.2d 394 (1985) 8, 11

Colorado River Water District v. United States, 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976) 7

Conover v. Montemuro, 477 F.2d 1073 (3d Cir. 1973) 13

Cramp v. Board of Public Instruction of Orange County, 137 So.2d 828 (Fla. 1962) 9

Deakins v. Monaghan, 484 U.S. 193, 108 S.Ct. 523, 98 L.Ed.2d 529 (1988) 7

TABLE OF AUTHORITIES – Continued

Page

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983) 23, 24, 25, 26, 27

Doran v. Salem Inn, Inc., 422 U.S. 922, 95 S.Ct. 2561, 45 L.Ed.2d 648 (1975) 7, 14

Freehling v. MGIC Financial Corp., 437 So.2d 191 (Fla. 4th D.C.A. 1983) 15

Hershey v. City of Clearwater, 834 F.2d 937 (11th Cir. 1987) 8, 9, 11

Hicks v. Miranda, 422 U.S. 332, 95 S.Ct. 2281 (1975) 6

Hollins v. Wessel, 819 F.2d 1073 (11th Cir. 1987) 24

Howell v. Supreme Court of Tex., 885 F.2d 308 (5th Cir. 1989) 24

Howlett v. Rose, ___ U.S. ___, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990) 25

Huffman v. Pursue, Ltd., 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975) 6

Jones v. Smith, 474 F.Supp. 1160 (S.D. Fla. 1979) 8, 9

Keramati v. Schackow, 553 So.2d 741 (5th D.C.A. 1989) 20

Kremer v. Chemical Construction Corp., 456 U.S. 461, 102 S.Ct. 1883, 72 L.Ed.2d 262 (1982) 16, 17, 18

Lane Drug Stores, Inc. v. Lee, 11 F.R.D. 672 (N.D. Fla. 1935) 8, 9

Liedel v. Juvenile Court of Madison County, Ala., 891 F.2d 1542 (11th Cir. 1990) 24

Lytle v. Household Mfg. Inc., 494 U.S. 545, 110 S.Ct. 1331, 108 L.Ed.2d 504 (1990) 16

TABLE OF AUTHORITIES – Continued

Page

Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 105 S.Ct. 1327, 84 L.Ed.2d 274 (1985) 16, 18

McDonald v. City of West Branch, Mich., 466 U.S. 284, 104 S.Ct. 1799, 80 L.Ed.2d 302 (1984) 17

Middlesex County Ethics Committee v. Garden State Bar Ass'n., 457 U.S. 423, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982) 7

Migra v. Warren City School Dist., 465 U.S. 75, 104 S.Ct. 892, 79 L.Ed.2d 56 (1984) 17, 18

Mobil Oil Corp. v. Shevin, 354 So.2d 372 (Fla. 1977) 15, 19

Montana v. United States, 440 U.S. 147, 99 S.Ct. 970, 59 L.Ed.2d 210 (1979) 15, 17

Obeda v. Connecticut Board of Registration for Professional Engineers & Land Surveyors, 570 F.Supp. 1007 (D.Conn 1983) 13

Parklane Hosiery Co. v. Shore, 439 U.S. 322, 99 S.Ct. 645, 58 L.Ed.2d 552 (1979) 15, 19

Parsons Steel. Inc. v. First Ala. Bank, 474 U.S. 518, 106 S.Ct. 768, 88 L.Ed.2d 877 (1986) 16, 17

Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 107 S.Ct. 1519 (1987) 7

Presbyterian Homes of Synod of Fla. v. Wood, 297 So.2d 556 (Fla. 1974) 9

Redner v. Citrus County, Fla., 919 F.2d 646 (11th Cir. 1990) 3, 5, 26

TABLE OF AUTHORITIES – Continued

Page

Regan v. Time, Inc., 468 U.S. 641, 104 S.Ct. 3262 (1984) 22

Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923) 23, 24, 26, 27

R & S Partnership v. Martin Schaffel Enterprises, Inc., 529 So.2d 794 (Fla. 3d D.C.A. 1988) 15

Samuels v. Mackell, 401 U.S. 66, 91 S.Ct. 764, 27 L.Ed.2d 688 (1971) 7, 13, 14

Seaboard Coast Line RR. Co. v. Cox, 338 So.2d 190 (Fla. 1976) 15, 19

Small v. Sun Oil Co., 222 So.2d 196 (Fla. 1969) .. 8, 9, 10

Smith v. Butterworth, 866 F.2d 1318 (11th Cir. 1989), *aff'd*, 494 U.S. 624, 110 S.Ct. 1376 (1990) 8, 9

State v. Champe, 373 So.2d 874 (Fla. 1978) 8, 10

State v. Calhoun County, 126 Fla. 376, 170 So. 883 (1936) 8

Steffel v. Thompson, 415 U.S. 452, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974) 14

Stratton v. Drumm, 445 F.Supp. 1305 (D. Conn. 1978) 13

Trucking Employees of N. Jersey Welfare Fund, Inc. v. Romano, 450 So.2d 843 (Fla. 1984) 19

United Books, Inc. v. Conte, 739 F.2d 30 (1st Cir. 1984) 13

Verhagen v. Arroyo, 552 So.2d 1162 (Fla. 3d D.C.A. 1989), *rev. denied*, 574 So.2d 144 (Fla. 1990) 20

TABLE OF AUTHORITIES – Continued

Page

Watson v. Buck, 313 U.S. 387, 61 S.Ct. 962 (1941) (Florida Law) 8, 10

Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 26 L.Ed.2d 669 (1971) ..... *passim*

Zeidwig v. Ward, 548 So.2d 209 (Fla. 1989) 20, 21

STATUTES

28 U.S.C. § 1254 1

28 U.S.C. § 1257 ..... 23, 24

28 U.S.C. § 1331 2

28 U.S.C. § 1343 2

28 U.S.C. § 1738 ..... 1, 17, 18, 21, 23

42 U.S.C. § 1983 2

PETITION FOR WRIT OF CERTIORARI

Citrus County, Florida, petitions this Court for a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit, to review and correct its orders entered December 18, 1990, and May 20, 1991.

OPINIONS BELOW AND BASIS OF JURISDICTION

The decisions of the United States Court of Appeals for the Eleventh Circuit are a December 18, 1990 affirmance in part and reversal in part with remand (of the ruling by the district court), 919 F.2d 646 (11th Cir. 1990), set out as Appendix A of this petition; and a May 20, 1991 order denying a motion for rehearing, set out as Appendix B of this petition.

This Court has jurisdiction to review those decisions of the court of appeals, pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL, STATUTORY, AND ORDINANCE PROVISIONS

The Full Faith and Credit Act, 28 U.S.C. § 1738, is set forth as Appendix C.

Citrus County, Florida Ordinances 88-05 & 88-06 are set forth as Appendices D and E.

STATEMENT OF THE CASE

On March 25, 1988, the Citrus County Board of County Commissioners enacted a temporary ordinance,

88-05, requiring the licensing of adult entertainment establishments operating within the County.[3] Before the end of that month, Respondents were thrice arrested, and then prosecuted, for operating an adult entertainment establishment in Citrus County without a license to do so, in violation of the temporary licensing ordinance.

In defending against those criminal charges, Respondents challenged the constitutionality of the temporary licensing ordinance, 88-05, throughout the state-court proceedings, trial and appellate. The state courts rebuffed Respondents' attacks, and affirmed their convictions.

Later in March 1988, Respondents filed in the district court, the first of two (later) consolidated cases, both brought as civil rights claims under 42 U.S.C. § 1983 (and the district court's original jurisdiction under 28 U.S.C. §§ 1331 and 1343).[4] Respondents sought injunctive,

---

[3] Besides requiring the operators of adult entertainment establishments within the county to obtain a license, the ordinance also required employees of the licensed adult entertainment establishments to obtain permits.

The successor, permanent ordinance, 88-06, contains the same requirements.

[4] The second § 1983 case involved challenges to the provisions of the Citrus County zoning ordinance, 88-A51, which established zoning restrictions for the location of adult entertainment establishments in the county. In that case, Respondent Redner, the sole Plaintiff, sought injunctive and declaratory relief only.

The district court reached the merits of Respondent's attacks upon the zoning ordinance, 88-A51, upholding it as

(Continued on following page)

declaratory, and monetary relief. They mounted the same attacks on the constitutionality of the temporary licensing ordinance, 88-05, and of its permanent successor, 88-06. The district court abstained under *Younger v. Harris*[5] from deciding the merits of Respondents' attacks on both of the licensing ordinances.

The court of appeals affirmed the abstention concerning 88-05, the temporary licensing ordinance, but reversed the abstention as to all of 88-06, remanding for determination Respondents' same claims on the entire ordinance.

The court of appeals noted that, despite the virtual identity of the two licensing ordinances (88-05 and 88-06), ordinance 88-06 contains two additional "substantive provisions . . . not present in 88-05": " §§ 2-5(c)(1)(E) and 2-12(c)."[6]

(Continued from previous page)

constitutional. The court of appeals commented that Respondent "Redner did not appeal the holding of the district court that Ordinance 88-A51 was a valid, content-neutral time, place and manner regulation."

> He did appeal the holding of the district court that Citrus County was not estopped [under Florida law] from enforcing 88-A51 against him. [Respondent] Redner was unentitled to rely on the inaction of Citrus County in not earlier adopting a zoning ordinance regulating the location of adult entertainment facilities. So, estoppel does not apply.

Redner v. Citrus County, Fla., 919 F.2d at 648 n.4.

[5] 401 U.S. 37, 91 S.Ct. 746, 26 L.Ed.2d 669 (1971).

[6] *Redner v. Citrus County, Fla.*, 919 F.2d at 650 n.9. These provisions add to the conditions in the ordinance under which

(Continued on following page)

The court of appeals did not note that amongst the provisions of 88-06 is a severability clause, § 1-9 Severability,[7] when it held that Respondents' identical challenges to the entire successor ordinance, 88-06, were subject to relitigation, notwithstanding the state-courts' rulings upholding, against the same attacks, the same provisions in the earlier ordinance, 88-05. A petition for rehearing and a suggestion of rehearing en banc, calling this to the court of appeals' attention were denied.

Failure of the court of appeals to accord that collateral estoppel effect to the decisions of the state-courts, transgresses the principles of federalism and comity mandated by Congress in the Full Faith & Credit Act, and by this Court in the Rooker-Feldman doctrine; and it requires unnecessary relitigation of issues that would never be allowed in the state-courts under the same law of issue preclusion.

(Continued from previous page)

denial of a license application is required, if the applicant "(a) is convicted of a crime involving moral turpitude committed within the course of the business activity; or (b) is or has been convicted of a felony or first degree misdemeanor directly related to the specific licensed business activity." *Id.*

[7] Section 1-9 (Severability) states: "If any portion of this Ordinance, or any application thereof is declared to be void, unconstitutional or invalid for any reason, such portion or provision, or this application thereof, shall be severable from this Ordinance. The remaining portions and provisions of this Ordinance, and all applications thereof shall remain in full force and effect. No void, unconstitutional or invalid portion or proscribed provision, or application thereof, was an inducement to the enactment of this Ordinance."

ARGUMENT

REASONS FOR ISSUING THE WRIT OF CERTIORARI

I. THE FULL FAITH & CREDIT ACT REQUIRES THE COURT OF APPEALS TO AFFIRM THE DISTRICT COURT'S ABSTENTION, AND PRECLUDES RELITIGATION OF RESPONDENTS' CONSTITUTIONAL CHALLENGES TO THE PROVISIONS OF 88-06 (THE LATER, PERMANENT LICENSING ORDINANCE), WHICH ARE IDENTICAL TO 88-05 (THE EARLIER, TEMPORARY LICENSING ORDINANCE).

A. The District Court's Abstention from the Merits of Respondents' Challenges to 88-05 was Mandatory under the *Younger v. Harris* Doctrine.

The court of appeals correctly affirmed the district court's abstention from deciding Respondents' claims concerning the constitutionality of 88-05, as necessarily and inevitably interfering with the ongoing, state-court, criminal proceedings against Respondents.[8]

> Because [Respondent] Redner was twice[9] released from jail on bond pending a state trial before he filed the federal suit, state criminal proceedings had begun against him. But even if we accept [Respondent] Redner's contention that, when he filed his suit in federal court, there were no pending state criminal proceedings, abstention was still appropriate because state criminal proceedings were well under way

---

[8] *Redner v. Citrus County, Fla.*, 919 F.2d at 649-50.

[9] The court of appeals was inaccurate. Respondent Redner was three times arrested and released on bond, pending consolidated prosecution against him for all three arrests and violations of the temporary licensing ordinance.

> by the time "any proceedings of substance on the merits [had] taken place in federal court." *Hicks [v. Miranda]*, 422 U.S. [332,] 349, 95 S.Ct. [2281,] 2292 [(1975)]. On the same day that the record shows the return of service of the federal complaint on defendants, [Respondent] Redner filed a motion to dismiss the charges in state court; [he] was found guilty in the state court long before the federal district court entered its decision to abstain. Redner's state criminal conviction was on appeal when the federal court decided to abstain.

Id.

"The rule in *Younger v. Harris* is designed to 'permit state courts to try state cases free from interference by federal courts,' . . . particularly where the party to the federal case may fully litigate his claim before the state court."[10] It is premised on the concept of comity, and on "the traditional doctrine that a court of equity should stay its hand when a movant has an adequate remedy at law."[11] When the conditions exist which invoke the principles underlying *Younger* abstention,[12] a district court

---

[10] *Hicks v. Miranda*, 422 U.S. at 349, 95 S.Ct. at 2292.

[11] *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 600-05, 95 S.Ct. 1200, 1206-08, 43 L.Ed.2d 482 (1975); *Younger v. Harris*, 401 U.S. at 46, 53-54, 91 S.Ct. at 751, 755.

[12] The conditions which mandate *Younger* abstention are:

1. There are ongoing state-court proceedings with which a federal court ruling on the federal claims would necessarily interfere;

2. "Important," or "vital" state interest(s) are at stake in (implicated by) the state proceedings; and

(Continued on following page)

has no discretion.[13] Having violated the temporary licensing ordinance three times, and incurred three prosecutions in state court, Respondents' claims for injunctive and declaratory relief in federal court were governed by the requirement of *Younger* abstention.[14]

(Continued from previous page)

3. The state-court proceedings afford an adequate opportunity to present the federal claims.

Middlesex County Ethics Committee v. Garden State Bar Ass'n., 457 U.S. 423, 432, 102 S.Ct. 2515, 2521, 73 L.Ed.2d 116 (1982)

[13] *See Colorado River Water District v. United States*, 424 U.S. 800, 816-17 & n.22, 96 S.Ct. 1236, 1245-46 & n.22, 47 L.Ed.2d 483 (1976) (where a case is properly within the category to which *Younger* abstention applies, "there is no discretion to grant injunctive relief"). *See also Deakins v. Monaghan*, 484 U.S. 193, 201, 108 S.Ct. 523, 529, 98 L.Ed.2d 529 (1988) ("the *Younger* doctrine . . . requires a federal court to abstain where a plaintiff's federal claims could be adjudicated in a pending state judicial proceeding"); *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 11, 14, 107 S.Ct. 1519, 1526, 1527 (1987) (so long as federal court challenges are "related to pending state proceedings, proper respect for the ability of state courts to resolve federal questions presented in state court litigation mandates that the federal court stay its hand"); *Middlesex County Ethics Committee v. Garden State Bar Ass'n.*, 457 U.S. at 435, 102 S.Ct. at 2523 (so long as constitutional claims can be determined in state court; and so long as no showing of bad faith, harassment, or other extraordinary circumstances, "the federal courts should abstain").

[14] *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 929, 95 S.Ct. 2561, 2566-67, 45 L.Ed.2d 648 (1975). "[F]or the same reasons *Samuels v. Mackell*, [401 U.S. 66, 72, 91 S.Ct. 764, 768, 27 L.Ed.2d 688 (1971)] bar[red] [Respondents] from obtaining declaratory relief," because of the potential preclusive effect of a federal court declaratory judgment on the state-court criminal proceedings, "*id.*, [Respondents'] prayers for both injunctive and

(Continued on following page)

B. The Provisions of 88-06, Which are Identical to 88-05, are Severable.

In holding that Respondents' identical attacks upon the constitutionality of like provisions in the later, permanent licensing ordinance, 88-06, were subject to relitigation in the federal courts, the court of appeals failed to note that 88-06 contains a severability clause.

The question of severability of state legislation is controlled by state law, and federal courts look to state-court decisions concerning the effect of such severability clauses.[15] Florida law, like federal law,[16] follows the principle that courts have an obligation to construe legislation so as to sustain its constitutionality whenever possible, by severing invalid portions, and permitting the remainder to stand.[17] Legislative intent is the controlling factor,

---

(Continued from previous page)

declaratory relief [we]re subject to *Younger's* restrictions." *Id.*, 95 S.Ct. at 2567. See *infra* notes 29 & 30 and accompanying text.

[15] *Brockett v. Spokane Arcades, Inc.*, 472 U.S. at 506-07, 105 S.Ct. at 2803; *Watson v. Buck*, 313 U.S. 387, 395-97, 61 S.Ct. 962, 964-65 (1941) (Florida Law). *See Smith v. Butterworth*, 866 F.2d 1318, 1321 (11th Cir. 1989), *aff'd*, 494 U.S. 624, 110 S.Ct. 1376 (1990); *Hershey v. City of Clearwater*, 834 F.2d 937, 939 (11th Cir. 1987).

[16] *See Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 506 n.15, 105 S.Ct. 2794, 2803 n.15, 86 L.Ed.2d 394 (1985).

[17] *Smith v. Butterworth*, 866 F.2d at 1321; *Jones v. Smith*, 474 F.Supp. 1160, 1169 (S.D. Fla. 1979); *State v. Champe*, 373 So.2d 874, 879-80 (Fla. 1978); *Small v. Sun Oil Co.*, 222 So.2d 196, 199 (Fla. 1969); *State v. Calhoun County*, 126 Fla. 376, 170 So. 883, 886 (1936). *See Lane Drug Stores, Inc. v. Lee*, 11 F.R.D. 672, 673 (N.D. Fla. 1935).

which is to be gleaned from the statute itself, interpreted as a whole.[18]

The standard for determining whether invalid portions of legislation are severable from the rest is whether the remaining portions constitute a complete and workable act which accomplishes the apparent legislative purpose, so that it can be concluded that the legislative body would have enacted it without the invalid portion.[19]

> When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.[20]

While a severability clause is not necessary to sever invalid portions of legislation,[21] the presence of a

---

[18] *Smith v. Butterworth*, 866 F.2d at 1321; *Jones v. Smith*, 474 F.Supp. at 1169; *Lane Drug Stores, Inc. v. Lee*, 11 F.R.D. at 673; *Small v. Sun Oil Co.*, 222 So.2d at 199.

[19] *Smith v. Butterworth*, 866 F.2d at 1321; *Hershey v. City of Clearwater*, 834 F.2d at 939-40; *Presbyterian Homes of Synod of Fla. v. Wood*, 297 So.2d 556, 559 (Fla. 1974); *Small v. Sun Oil Co.*, 222 So.2d at 199.

[20] *Cramp v. Board of Public Instruction of Orange County*, 137 So.2d 828, 830 (Fla. 1962).

[21] *Jones v. Smith*, 474 F.Supp. at 1169; *Small v. Sun Oil Co.*, 222 So.2d at 199.

severability clause "is highly persuasive"[22] that the legislative intent parallels the courts' duty to follow the principles of limited invalidation in order to preserve the remaining portions. "When a severability clause is included in the statute, . . . the expressed legislative intent in this respect should be carried out unless to do so would produce an unreasonable, unconstitutional or absurd result."[23]

In *Watson v. Buck*, this Court noted that the Florida legislature had included a severability clause as part of the legislation under review: "What the legislature intended in this regard was spelled out in section 12 of the Act in the clear and emphatic language of the legislature itself."[24]

> This is a flat statement that the Florida legislature intended that the act should stand and be enforced "after the exclusion of such part or parts" as might be held invalid. Unless a controlling decision by Florida courts compels a different course, the federal courts are not justified in speculating that the state legislature meant exactly the opposite of what it declared "to have been the legislative intent." But the Supreme Court of Florida recognizes and seeks to carry out the legislative intent thus expressed.[25]

Here, both ordinance 88-06, itself, expressly provides for, and general Florida law favors, severability of

---

[22] *State v. Champe*, 373 So.2d at 880.

[23] *Small v. Sun Oil Co.*, 222 So.2d at 199.

[24] 313 U.S. at 395, 61 S.Ct. at 964.

[25] *Id.* at 396.

unconstitutional parts of the legislation.[26] That the remainder of ordinance 88-06, without the two additional provisions, constitutes a complete and workable ordinance, accomplishing the purpose of regulating by license and permit, adult entertainment establishments in Citrus County; and that the legislative body would have enacted the remainder of 88-06, without the two additional provisions, is conclusive from the fact that the remainder of 88-06 is identical to 88-05, the earlier-enacted, temporary ordinance which it replaced, and under which Plaintiffs were convicted.

The two additional provisions of the later, permanent ordinance, 88-06, are severable from the remainder of the ordinance (identical to 88-05, which was upheld by the state courts). It was incumbent upon the court of appeals to do so, as a corollary of the principle of partial invalidation, in order to preserve the constitutionality of the remainder of 88-06.

> This standard [under Washington law] is similar to that which we would apply in determining the severability of a federal statute: "unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law."[27]

---

[26] *See Hershey v. City of Clearwater*, 834 F.2d at 939.

[27] *Brockett v. Spokane Arcades, Inc.*, 472 U.S. at 506 n.15, 105 S.Ct. at 2803 n.15.

C. The District Court's Abstention from the Merits of Respondents' Challenges to the Identical Provisions in 88-06 was Equally Mandatory, under *Younger v. Harris.*

Because it failed to follow the principle of partial invalidation, and give effect to the severability clause contained in 88-06, the court of appeals mistakenly thought that

> The presence in Ordinance 88-06 of substantive provisions absent from Ordinance 88-05 potentially requires that each of Ordinance 88-06's provisions be construed in the context of these additional substantive provisions. Therefore, even if the federal district court had held Ordinance 88-06 unconstitutional, the state courts might still have properly held that Ordinance 88-05 was constitutional. The federal court decision on 88-06 might have been persuasive authority in the state court, but that such a federal court decree would have inevitably barred a contrary state judgment on the constitutionality of a different ordinance is doubtful. . . . For example, the federal court might have held – or may still hold – 88-06 unconstitutional on the basis of provisions in 88-06 but not in 88-05 . . . In addition, the state criminal proceeding would not necessarily determine the constitutionality of Ordinance 88-06.[28]

Because of the identity of Respondents' challenges to the constitutionality of both adult entertainment licensing ordinances, (in federal court, and as defendants in the earlier state-court criminal proceedings); and because any ruling by the district court would have necessarily

---

[28] 919 F.2d at 650 & n.10.

intruded upon those state-court criminal proceedings, confronting the same issues; the district court correctly adhered, at that time, to the principles of comity and federalism underlying *Younger* abstention, and refrained from deciding the merits of those same constitutional challenges.[29]

---

[29] *See Samuels v. Mackell*, 401 U.S. at 72, 91 S.Ct. at 76 (*Younger* abstention bars the preclusive impact of a federal court ruling on identical issues presented in earlier criminal proceedings); *Ballard v. Wilson*, 856 F.2d 1568, 1570 (5th Cir. 1988) (*Younger* abstention required when any future injunctive or declaratory relief would unavoidably affect course and outcome of pending state-court proceedings by actually resolving issues central to those proceedings); *United Books, Inc. v. Conte*, 739 F.2d 30, 33 (1st Cir. 1984) (*Younger* policy requires abstention from injunctive or declaratory relief which would decide issues central to pending, state criminal proceedings, and become binding on them); *Conover v. Montemuro*, 477 F.2d 1073, 1080 (3d Cir. 1973) (abstention required if requested declaratory relief would adjudicate issue that might affect state prosecution by means of collateral estoppel); *Obeda v. Connecticut Board of Registration for Professional Engineers & Land Surveyors*, 570 F.Supp. 1007, 1011, 1013 (D.Conn 1983) (*Younger* abstention necessary to avoid interference that injunctive or declaratory relief would have through collateral estoppel effects on state proceeding). *Cf. Stratton v. Drumm*, 445 F.Supp. 1305 (D. Conn. 1978) (district court not required to abstain, because pending state-court action dealt with challenges to original ordinance, totally apart from federal court challenges to validity of later amendments to ordinance).

The preclusive impact of a federal court ruling, on identical issues presented in earlier, ongoing state criminal proceedings, is exactly the interference barred by the *Younger* abstention doctrine. In *Samuels v. Mackell, supra*, this Court ruled that since the preclusive effect of a declaratory judgment

(Continued on following page)

The crucial question in the district court was whether a ruling by it, on the same constitutional challenges to the later, permanent licensing ordinance (88-06), would necessarily have interfered with the state-court criminal proceedings based on the identical, but earlier, temporary licensing ordinance (88-05), in which Respondents raised the same constitutional attacks. Premised on the principles of equity, comity, and federalism, abstention is necessary to prevent federal courts from interfering with ongoing state-court criminal proceedings, either through injunctive or declaratory relief.[30]

Because those provisions of 88-06, which are identical to 88-05, are severable from the two, additional provisions in 88-06, a ruling by the district court on the same constitutional issues raised by Respondents, and directed to identical provisions of the two licensing ordinances,

---

(Continued from previous page)

would "ha[ve] virtually the same practical impact as a formal injunction would," *Younger* abstention forbade a federal court from so interfering with ongoing, state criminal proceedings. "[T]he federal court has virtually lifted the case out of the State [court] before it could be heard." 401 U.S. at 72, 91 S.Ct. at 768. *Accord Doran v. Salem Inn, Inc.*, 422 U.S. at 929, 95 S.Ct. at 2566-67 (ruling in *Samuels v. Mackell* barred claim for declaratory relief when state-court criminal proceedings pending, and required *Younger* abstention); *Steffel v. Thompson*, 415 U.S. 452, 461 & n.11, 94 S.Ct. 1209, 1217 & n.11, 39 L.Ed.2d 505 (1974) (intrusive effect, including potential "res judicata effect," of declaratory relief results in same interference with and disruption of state proceedings that *Younger* abstention "was designed to avoid").

[30] *Younger v. Harris*, 401 U.S. at 43-45, 91 S.Ct. at 750-51; *Samuels v. Mackell*, 401 U.S. at 73, 91 S.Ct. at 768. *Accord Doran v. Salem Inn, Inc.*, 422 U.S. at 929, 95 S.Ct. at 2566-67.

well might have supplied the essential elements[31] of collateral estoppel, precluding further litigation of the same issues in the ongoing, state criminal cases.

The district court's abstention, on all of Respondents' identical attacks on the identical provisions of 88-06 (except for the two additional provisions found in 88-06 only), was not only proper, but mandatory. Just as the district court properly could do nothing other than abstain – except for the two additional provisions in 88-06 –, the court of appeals, under the dictate of the Full Faith and Credit Act, correctly should have done nothing other than affirm that abstention (except for the two additional provisions of 88-06).

---

[31] Under Florida law, collateral estoppel applies to preclude relitigation of the same issues, between the same parties, once those issues have been fully litigated and decided. *Mobil Oil Corp. v. Shevin*, 354 So.2d 372, 374 (Fla. 1977); *Seaboard Coast Line R.R. Co. v. Cox*, 338 So.2d 190, 191 (Fla. 1976); *R & S Partnership v. Martin Schaffel Enterprises, Inc.*, 529 So.2d 794, 795 (Fla. 3d D.C.A. 1988); *Freehling v. MGIC Financial Corp.*, 437 So.2d 191, 193 (Fla. 4th D.C.A. 1983).

Issue preclusion, under federal law, while not requiring the same parties ("mutuality of parties"), prevents "relitigating an identical issue with the same party or his privy," *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326, 99 S.Ct. 645, 649, 58 L.Ed. 2d 5552 (1979). "Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." *Montana v. United States*, 440 U.S. 147, 153, 99 S.Ct. 970, 973, 59 L.Ed.2d 210 (1979). The critical elements, common to federal and Florida issue preclusion, are the identity of issues litigated and actually decided, in an earlier case.

D. Finality of the State-Court Judgment On Respondents' Constitutional Challenges to 88-05 Precludes Relitigating Those Same Challenges to the Identical Provisions of 88-06.

The threshold question now is whether, under the collateral estoppel principles of Florida law, the final decision of the Florida courts, upholding the criminal convictions over the same attacks upon the constitutionality of ordinance 88-05, precludes Respondents from continuing to raise the same constitutional issues in federal court concerning the identical remaining provisions in 88-06.

Instead of abstention, the same basic principles of federalism and comity apply[32] with greater force, through the collateral estoppel effect of Florida law, required by the Full Faith and Credit Act, to be accorded (by all lower federal courts) to the final, state-court decision. "Collateral estoppel protects parties from multiple lawsuits and the possibility of inconsistent decisions, and it conserves judicial resources."[33]

> To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the

---

[32] *See Parsons Steel, Inc. v. First Ala. Bank*, 474 U.S. 518, 523, 106 S.Ct. 768, 771, 88 L.Ed.2d 877 (1986); *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 385, 105 S.Ct. 1327, 1334, 84 L.Ed.2d 274 (1985); *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 478, 102 S.Ct. 1883, 1896, 72 L.Ed.2d 262 (1982); *Allen v. McCurry*, 449 U.S. 90, 96, 101 S.Ct. 411, 415, 66 L.Ed.2d 308 (1980).

[33] *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, ___, 110 S.Ct. 1331, 1337, 108 L.Ed.2d 504 (1990).

> expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.[34]

The Full Faith and Credit Act, 28 U.S.C. § 1738,[35] obliges a federal court to give the same preclusive effect to a state court judgment, as it would be given under the law of the state in which the judgment was rendered.[36]

> [28 U.S.C. § 1738] embodies the view that it is more important to give full faith and credit to state-court judgments than to ensure separate forums for federal and state claims. This reflects a variety of concerns, including notions of comity, the need to prevent vexatious litigation, or a desire to conserve judicial resources.[37]

Section "1738 requires a federal court to look first to state preclusion law in determining the preclusive effects

---

[34] *Montana v. United States*, 440 U.S. at 153-54, 99 S.Ct. at 973-74.

[35] By the Full Faith and Credit Act, Congress implemented the Full Faith and Credit Clause of the Constitution, art. IV, § 1, extending to the federal courts the same requirement obligatory to state courts. *Migra v. Warren City School Dist.*, 465 U.S. 75, 80, 104 S.Ct. 892, 896, 79 L.Ed.2d 56 (1984); *Kremer v. Chemical Construction Corp.*, 456 U.S. at 483 n.24, 102 S.Ct. at 1898 n.24.

[36] *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. at 525, 106 S.Ct. at 772; *McDonald v. City of West Branch, Mich.*, 466 U.S. 284, 287, 104 S.Ct. 1799, 1801, 80 L.Ed.2d 302 (1984); *Migra v. Warren City School Dist.*, 465 U.S. at 81, 104 S.Ct. at 896; *Kremer v. Chemical Construction Corp.*, 456 U.S. at 466, 102 S.Ct. at 1889.

[37] *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. at 84, 104 S.Ct. at 898.

of a state court judgment."[38] "This statute directs a federal court to refer to the preclusion law of the State in which the judgment was rendered."[39]

> It has been long established that § 1738 does not allow federal courts to employ their own rules of *res judicata* in determining the effect of state judgments. Rather, it goes beyond the common law and commands a federal court to accept the rules chosen by the state from which the judgment is taken.[40]

This Court's decision in *"Allen [v. McCurry]* made clear that issues actually litigated in a state-court proceeding are entitled to the same preclusive effect in a subsequent federal § 1983 suit as they enjoy in the courts of the State where the judgment was rendered."[41] *"Allen [v. McCurry]* held that § 1983 did not open the way to relitigation of an issue that had been determined in a state criminal proceeding."[42]

Under 28 U.S.C. § 1738, the court of appeals should have applied the Florida law of collateral estoppel to determine the preclusive effect of the state-courts' criminal judgment on Respondents' identical § 1983 claims concerning the remaining provisions of 88-06.

---

[38] *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. at 381, 105 S.Ct. at 1332.

[39] *Id.*

[40] *Kremer v. Chemical Construction Corp.*, 456 U.S. at 482, 102 S.Ct. at 1898.

[41] *Migra v. Warren City School Dist.*, 465 U.S. at 83, 104 S.Ct. at 897.

[42] *Id.* at 84, 104 S.Ct. at 897.

E. The Florida Law of Collateral Estoppel Applies Now to Bar (Preclude) Relitigation of Respondents' Same Constitutional Attacks Upon the Identical Provisions in 88-06.

Historically, Florida collateral estoppel law has required (1) identical issues; (2) actually litigated in an earlier case; (3) between identical parties, or their privies; and (4) determined by a court of competent jurisdiction in the first case, as a necessary part of its decision.[43]

Although Florida law, unlike federal law,[44] retains the requirement of "mutuality of parties" – the parties in a later case (in which collateral estoppel is asserted) must be identical to, or in privity with, the parties in the earlier case (in which the same issues are claimed to have been decided) – , as one of the essential elements for collateral estoppel,[45] the Florida supreme court has recently

---

[43] *See Trucking Employees of N. Jersey Welfare Fund, Inc. v. Romano*, 450 So.2d 843, 845 (Fla. 1984); *Mobil Oil Corp. v. Shevin*, 354 So.2d 372, 374 (Fla. 1977); *Seaboard Coast Line R.R. Co. v. Cox*, 338 So.2d 190, 191 (Fla. 1976).

[44] *See, e.g., Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331-33, 99 S.Ct. 645, 651-52, 58 L.Ed.2d 552 (1979) (mutuality of parties not required for offensive collateral estoppel where defendant had full and fair opportunity to litigate identical issue, which was decided adversely); *Blonder-Tongue Laboratories, Inc. v. University of Ill. Foundation*, 402 U.S. 313, 328, 91 S.Ct. 1434, 1442 (mutuality of parties not required for defensive use of collateral estoppel against plaintiff that fully and fairly litigated issue, and lost).

[45] "[T]he well established rule in Florida has been and continues to be that collateral estoppel may be asserted only when the identical issue has been litigated between the same parties or their privies." *Trucking Employees of N. Jersey Welfare Fund, Inc. v. Romano*, 450 So.2d at 845 (mutuality of parties required for offensive collateral estoppel).

dispensed with the element of mutuality of parties for defensive collateral estoppel in criminal-to-civil contexts.[46]

> [We] approve the use of defensive collateral estoppel to prevent a criminal defendant, as a plaintiff, from relitigating the same issue which has been litigated in prior criminal proceedings.
>
> . . .
>
> Accordingly, we find defensive collateral estoppel should be applied in this criminal-to-civil context.[47]

Florida and federal decisions, applying Florida law, uniformly recognize that the requirement of mutuality of parties, has been abolished for the application of collateral estoppel to identical issues in the criminal-to-civil context.[48]

---

[46] *See Zeidwig v. Ward*, 548 So.2d 209, 214-15 (Fla. 1989); *Keramati v. Schackow*, 553 So.2d 741, 744 n.5 (5th D.C.A. 1989) (mutuality of parties not prerequisite to defensive application of collateral estoppel in criminal-to-civil context).

[47] *Zeidwig v. Ward*, 548 So.2d at 209, 213, 214-15.

[48] *See Allstate Ins. v. Cruse*, 734 F.Supp. 1574, 1581 (M.D. Fla. 1989) (identity or mutuality of parties or their privies not a prerequisite in Florida to defensive application of collateral estoppel from criminal-to-civil context); *Keramati v. Schackow*, 553 So.2d at 744 n.5 (same); *cf. Verhagen v. Arroyo*, 552 So.2d 1162, 1164 (Fla. 3d D.C.A. 1989) (defensive collateral estoppel applied against plaintiff suing attorney who represented defendants in transaction on which they were sued unsuccessfully by plaintiff in earlier case, without "strict 'mutuality of parties' [being] necessary"), *rev. denied*, 574 So.2d 144 (Fla. 1990).

In the now-final, state-court criminal cases, the State of Florida prosecuted Respondents for violating temporary licensing ordinance 88-05. They defended against those charges by raising constitutional issues concerning the legality of the ordinance. The state courts, trial and appellate, decided those constitutional issues adversely to Respondents.

Respondents then raised the same constitutional issues concerning both licensing ordinances, 88-05 and 88-06, in the first of the consolidated, federal cases against Petitioner, Citrus County.[49] The district court expressly abstained from deciding those issues, because the state appellate proceedings were still ongoing. Those proceedings are now concluded.

The Full Faith and Credit Act mandates "the defensive application of the doctrine of collateral estoppel in the criminal-to-civil context,"[50] under Florida law, to foreclose further litigation in any lower federal court of Respondents' attacks on the constitutionality of the identical provisions of Citrus County licensing ordinances 88-05 and 88-06 (except only for the two additional provisions of 88-06). 28 U.S.C. § 1738 requires that Respondents' same constitutional challenges, to the identical provisions of the two licensing ordinances, be met by the

---

[49] Citrus County, as a subdivision of the state of Florida, is sufficiently in privity with the state of Florida, to satisfy the mutuality of parties for collateral estoppel under Florida law, if that were still necessary. As a result of the decision in *Zeidwig v. Ward*, however, the privity relationship need not be considered, in this criminal-to-civil context.

[50] *Zeidwig v. Ward*, 548 So.2d at 209.

collateral estoppel effect from the final, state-court criminal decision, precluding further litigation of the same issues concerning the same provisions.

All of the reasons for, and objectives served by, the principles of preclusion generally, and the specific legislative command of the Full Faith and Credit Act, are thwarted by the court of appeals' failure to heed the Florida law of severability and of collateral estoppel, and to foreclose relitigation of the same constitutional claims concerning the same licensing-ordinance provisions.

The reasons and objectives underlying preclusion generally, and the Full Faith and Credit Act specifically, are fulfilled by restricting any remand to the district court to consideration of only the additional provisions of 88-06. The conclusiveness and finality of the state-courts' judgments is respected as comity between the judicial systems of the state and federal sovereigns. Unnecessary expense, time, and use of resources for relitigation is prevented. The possibility of inconsistent rulings and results is avoided.

Under the Full Faith and Credit Act, the state-court decisions upholding the identical provisions of 88-05 are entitled to be given their collateral estoppel effect, to Respondents' identical attacks in federal court upon the same provisions in 88-06. The court of appeals should have been keen to "refrain from invalidating more of [ordinance 88-06] than is necessary."[51] The failure of the court of appeals to adhere to the principle of limited

---

[51] *Regan v. Time, Inc.*, 468 U.S. 641, 652, 104 S.Ct. 3262, 3269 (1984).

invalidation led further to its violation of the Full Faith and Credit Act

Given the state-courts' upholding the constitutionality of the provisions in ordinance 88-05, over Respondents' identical attacks on them (later mounted, in federal court, against the same ordinance and the like provisions in ordinance 88-06); and given the effect of the severability clause contained in 88-06; the Full Faith and Credit Act, 28 U.S.C. § 1738, mandates that the preclusive (collateral estoppel) effect of the state-courts' rulings be respected.

II. THE ROOKER-FELDMAN DOCTRINE REQUIRES THE COURT OF APPEALS TO AFFIRM THE DISTRICT COURT'S ABSTENTION, AND FORBIDS LITIGATION OF, RESPONDENTS' CONSTITUTIONAL CHALLENGES TO THE PROVISIONS OF 88-06 (THE LATER, PERMANENT LICENSING ORDINANCE), BECAUSE THEY ARE INEXTRICABLY INTERTWINED WITH THE STATE-COURT JUDGMENT REJECTING THOSE CONSTITUTIONAL CHALLENGES TO THE IDENTICAL PROVISIONS OF 88-05 (THE EARLIER, TEMPORARY LICENSING ORDINANCE).

The *Rooker-Feldman* doctrine[52] construes 28 U.S.C. § 1257, by reaffirming the principle that the lower federal courts have no jurisdiction to decide federal issues that are "inextricably intertwined" with a state-court decision.

---

[52] The doctrine stems from two of this Court's decisions: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983).

It is a jurisdictional bar against even implicit review of a state-court decision by lower federal courts, where federal issues are "inextricably intertwined" with the state-court judgment.[53]

Even if federal claims were not raised in the state court (which is not the case at hand), the lower federal courts may not decide the federal issues because in essence it is an attempt to invoke direct review of the state-court judgment.[54] The lower federal courts are not a forum for appealing state-court decisions.[55]

---

[53] The court of appeals' own decisions acknowledge the jurisdictional bar stated by the *Rooker-Feldman* doctrine. *Liedel v. Juvenile Court of Madison County, Ala.*, 891 F.2d 1542, 1545 (11th Cir. 1990); *Blue Cross & Blue Shield of Md., Inc. v. Weiner*, 868 F.2d 1550, 1555 (11th Cir.), *cert. denied*, ___ U.S. ___, 110 S.Ct. 239, 1475, 107 L.Ed.2d 190, 108 L.Ed.2d 612 (1990); *Hollins v. Wessel*, 819 F.2d 1073, 1074 (11th Cir. 1987); *Berman v. Florida Bd. of Bar Examiners*, 794 F.2d 1529, 1530 (11th Cir. 1986).

[54] *See, e.g., Liedel v. Juvenile Court of Madison County, Ala.*, 891 F.2d at 1545-46 (to extent that federal court complaint challenged judgment from state-court child custody proceedings, lower federal courts had no jurisdiction); *Howell v. Supreme Court of Tex.*, 885 F.2d 308, 311-12 (5th Cir. 1989) (where a plaintiff presented same claims in federal court already decided against him by Texas Supreme Court, claims were "inextricably intertwined" with state-court decision, for which lower federal courts lacked jurisdiction); *Blue Cross & Blue Shield of Md., Inc. v. Weiner*, 868 F.2d at 1553-56 (Florida trial court's judgment, on appeal, was "inextricably intertwined" with Blue Cross' belated ERISA-preemption claim in federal court, so that any decision by federal court "would necessarily review these essential components of the Florida trial court's judgment," for which federal courts lack jurisdiction).

[55] *District of Columbia Court of Appeals v. Feldman*, 460 U.S. at 482-86 & n.16, 103 S.Ct. at 1315-17 & n.16; *Atlantic Coast Line*

(Continued on following page)

This Court has exclusive jurisdiction to review state-court decisions, involving alleged federal law errors, from the highest available state tribunal, pursuant to 28 U.S.C. § 1257.[56] "The *Rooker-Feldman* doctrine interprets 28 U.S.C. § 1257 as ordinarily barring direct review in the lower federal courts of a decision reached by the highest state court, for such authority is vested solely in this Court."[57] Finality of state court decisions is essential to federal review of this Court, pursuant to 28 U.S.C. § 1257. "[I]t [is] within both [the] power and [the] proper role [of state courts] to render binding judgments on issues of federal law, subject only to review by this Court."[58]

The state-court criminal proceedings concluded by upholding the constitutionality of the temporary licensing ordinance, 88-05, and Respondents' convictions, over their challenges to that ordinance. Respondents' challenges in the federal courts to the identical provisions found in ordinance 88-06 are "inextricably intertwined" with the state courts' judgment on Respondents' exact

---

(Continued from previous page)

R.R. Co. v. Locomotive Engineers, 398 U.S. 281, 296, 90 S.Ct. 1739, 1748, 26 L.Ed.2d 234 (1970).

[56] *District of Columbia Court of Appeals v. Feldman*, 460 U.S. at 482-86 & n.16, 103 S.Ct. at 1315-17 & n.16.

[57] *ASARCO, Inc. v. Kadish*, 490 U.S. 605, 622, 109 S.Ct. 2037, 2048, 104 L.Ed.2d 696 (1989).

[58] *Id.* at 2047. The Supremacy Clause makes the Constitution and laws of the United States "the Supreme Law of the Land"; and it "charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure." *Howlett v. Rose*, ___, U.S. ___, ___, 110 S.Ct. 2430, 2438, 110 L.Ed.2d 332 (1990).

same challenges to ordinance 88-05. In the district court, and at oral argument in the court of appeals, Respondents acknowledged that the two ordinances are virtually identical.[59] The issues and claims asserted in the state-court criminal proceedings, are identical to those raised in the federal courts; and the state court judgment is final, after appellate review. Under the *Rooker-Feldman* doctrine, that judgment is to be left unreviewed by the lower federal courts.

The lower federal courts have no jurisdiction to determine again the same issues concerning the severable, identical provisions of 88-06, because those issues are "inextricably intertwined" with the state-court criminal judgment, upholding the constitutionality of the same provisions in 88-05. Further litigation of those same issues in the present case, is a request for a ruling by the federal courts, rethinking or reconsidering the state-courts' adjudication of these identical issues (except only for the two additional provisions of 88-06).

The court of appeals' failure to adhere to the principle of limited invalidation led further to violating the jurisdictional boundaries of the *Rooker-Feldman* doctrine. That violation is not only an unfounded pretense of power, but inevitably also an affront to the fidelity of the state-courts' adjudication of the same constitutional challenges already raised by Respondents.

---

[59] Respondent "Redner conceded, at oral argument, that the two ordinances are virtually identical 'for all material purposes of constitutional inquiry.' " *Redner v. Citrus County, Fla.*, 919 F.2d at 650 n.9.

The federal courts – the court of appeals, and the district court on any unrestricted remand – should confront at once their lack of subject matter jurisdiction to consider the merits of the same claims and issues involved in Respondents' present, federal-court challenges to the identical provisions comprising most of the permanent licensing ordinance (88-06), as "inextricably intertwined" with the final, state-court judgment rejecting those same challenges to 88-05. The *Rooker-Feldman* doctrine forbids any implicit review, by the lower federal courts, of the same provisions, issues, and challenges inextricably intertwined in the state-courts' judgment.

CONCLUSION

This Court should issue a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit, vacating its December 18, 1990 decision and directing it to follow the dictates of the Full Faith and Credit Act and of the *Rooker-Feldman* doctrine,

1. by employing the principle of limited or partial invalidation through the severability clause contained in ordinance 88-06;

2. by according the preclusive effect under Florida law, from the decisions of the Florida courts upholding the constitutionality of ordinance 88-05, to the same issues concerning the identical provisions in ordinance 88-06; and

3. by refraining from any federal court proceedings that implicitly and necessarily reflect on, and review, the

state-court decisions, through a remand restricted to only the additional, severed provisions of ordinance 88-06.

Respectfully submitted,

/s/ Russell W. LaPeer
RUSSELL W. LAPEER
Florida Bar No. 200530

/s/ Robert R. Wheeler
ROBERT R. WHEELER
Florida Bar No. 796409

PATTILLO & MCKEEVER, P.A.
Post Office Box 1450
Ocala, Florida 32678
(904) 732-2255

Attorneys for Petitioner,
Citrus County, Florida

APPENDIX A

919 F.2d 646

Joe REDNER, Plaintiff-Appellant,

Thomas George Secchairi, Phyllis Patrick, Tammy Benard, Amanda Benard Oliver, Plaintiffs,

v.

CITRUS COUNTY, FLORIDA, Defendant-Appellee,

Charles S. Dean, Sheriff of Citrus County, Florida and individually, Skip Hudson, Alex Griffin, William F. Broska, John Barnes, Nick Bryant, Defendants.

Joe REDNER, Plaintiff-Appellant,

v.

CITRUS COUNTY, a Political Subdivision of the State of Florida, Defendant-Appellee.

No. 89-3823.
United States Court of Appeals, Eleventh Circuit
Dec. 18, 1990.

Owner of adult entertainment facility and others brought action against county, county commissioners, and sheriff to challenge constitutionality of ordinances requiring licensing of adult entertainment facilities. The United States District Court for the Middle District of Florida, Nos. 88-50-CIV-OC-12, 88-193-CIV-OC-12, William K. Thomas, J., sitting by designation, dismissed claims against commissioners and sheriff, abstained from deciding constitutionality of licensing ordinances, and upheld validity of zoning ordinance. Owner appealed. The Court of Appeals, Edmondson, Circuit Judge, held

that *Younger* abstention was appropriate with respect to licensing ordinance under which owner was prosecuted, but was improper with respect to successor ordinance on licensing of adult entertainment facilities.

Affirmed in part, reversed in part, and remanded.

1. **Civil Rights 214(4)**

County commissioners enjoyed legislative immunity in § 1983 suit challenging constitutionality of ordinances requiring licensing of adult entertainment facilities. 42 U.S.C.A. § 1983.

2. **Civil Rights 214(6)**

Sheriff was immune from § 1983 claim for damages for enforcing presumptively valid laws. 42 U.S.C.A. § 1983.

3. **Civil Rights 262**

Lack of showing that sheriff would enforce ordinances if they were declared unconstitutional justified dismissal of sheriff from claims for injunctive relief in challenge to constitutionality of ordinances requiring licensing of adult entertainment facilities.

4. **Zoning and Planning 762**

County's failure earlier to adopt zoning ordinance regulating location of adult entertainment facilities could not be relied on by owner of such a facility and did not estop county from enforcing ordinance.

5. **Federal Courts 41, 763**

Exhaustion of state criminal appeals after *Younger* abstention was invoked by district court did not make

Younger abstention inapplicable; issue before Court of Appeals was whether district court properly abstained, considering circumstances with which it was presented when it abstained.

6. **Federal Courts 56**

State criminal proceedings began against owner of adult entertainment facility when he was arrested and twice released on bond for violating ordinance requiring licensing of adult entertainment facility, and, thus, *Younger* abstention was appropriate with respect to federal action challenging constitutionality of ordinance under which owner was prosecuted.

7. **Federal Courts 56**

Younger abstention would have been appropriate even if state criminal proceedings for violating ordinance that required licensing of adult entertainment facilities were not pending when owner of adult entertainment facility filed federal action challenging constitutionality of ordinance, where state criminal proceedings were well underway by the time of any proceedings on merits in federal court.

8. **Federal Courts 56**

County ordinance that allegedly was directed solely at owner of adult entertainment facility and was enacted one day before planned opening of facility did not, in itself, establish bad faith prosecution allegedly making *Younger* abstention inappropriate in challenge to constitutionality of ordinance requiring licensing of adult entertainment facilities. U.S.C.A. Const.Amend. 1.

9. **Federal Courts 56**

Even though successor ordinance was similar to predecessor adult entertainment ordinance under which facility owner was prosecuted, and even though condition of owner's appeal bond prohibited opening of business in violation of county ordinances, *Younger* abstention with respect to constitutionality of successor ordinance was improper; successor ordinance contained substantive provisions absent from predecessor, and existence of bond adjudicated nothing on question of ordinance validity. U.S.C.A. Const.Amend 1.

Luke C. Lirot, Clearwater, Fla., for J. Redner, T.G. Secchairi and A.B. Oliver.

Russell W. LaPeer and Robert R. Wheeler, Pattillo & McKeever, P.A., Ocala, Fla., for Citrus County, Fla.

Appeal from United States District Court for the Middle District of Florida.

Before EDMONDSON and BIRCH, Circuit Judges, and RE*, Chief Judge.

EDMONDSON, Circuit Judge:

This case presents the issue whether the federal district court properly abstained from considering the merits of a section 1983 suit brought by Joe Redner against Citrus County, Florida, in which Redner – the owner of

---

* Honorable Edward D. Re, Chief Judge of the U.S. Court of International Trade, sitting by designation.

an adult entertainment facility – challenged the constitutionality of emergency Ordinance 88-05 and its successor ordinance, 88-06[1], when there were ongoing state criminal prosecutions against Redner and his employees for violating Ordinance 88-05, which regulated adult entertainment businesses.

In federal district court, this suit – which sought a permanent injunction against the enforcement of the ordinances, declaratory judgment that the ordinances were unconstitutional, and damages from the County, the County Commissioners, and the County Sheriff – was consolidated with another section 1983 suit brought by Redner against the County. The second federal lawsuit sought a permanent injunction of the enforcement of Ordinance 88-A51[2] (a zoning ordinance) against Redner, a declaratory judgment that Ordinance 88-A51 was unconstitutional, and a declaratory judgment that Citrus County was equitably estopped from enforcing the ordinance with respect to Redner's establishment.

[1-4] The federal district court (1) dismissed the claims against the Commissioners, and Sheriff Dean in their individual and official capacities;[3] (2) abstained

---

[1] Both ordinances require the licensing of adult entertainment facilities and the permitting of the people who work at such establishments and provide criminal sanctions for violating the ordinance. Ordinance 88-06 was enacted two months after 88-05 and replaced 88-05.

[2] Ordinance 88-A51 is a zoning ordinance which restricts the locations in which adult entertainment facilities may be established. It was enacted when Ordinance 88-06 was enacted.

[3] The commissioners in this action were properly dismissed on the grounds of legislative immunity. *See Lake County*

(Continued on following page)

from deciding the constitutionality of Ordinances 88-05 and 88-06 on the *Younger* grounds that reaching the merits of the constitutional claims would interfere with pending state court criminal proceedings (the claims for injunctive and declaratory relief were dismissed, and the claim for damages was stayed); and (3) held that zoning Ordinance 88-A51 was a valid, content-neutral time, place and manner regulation and that Citrus County was not estopped from enforcing 88-A51 against Redner.[4]

(Continued from previous page)

Estates, Inc. v. Tahoe Reg. Planning Agency, 440 U.S. 391, 99 S.Ct. 1171, 59 L.Ed.2d 401 (1979); *Tenney v. Brandhove*, 341 U.S. 367, 71 S.Ct. 783, 95 L.Ed. 1019 (1951); *Healy v. Town of Pembroke Park*, 831 F.2d 989 (11th Cir.1987). The district court properly dismissed the sheriff as a defendant from the claim for damages. *Michigan v. DeFillippo*, 443 U.S. 31, 38, 99 S.Ct. 2627, 2632, 61 L.Ed.2d 343 (1979) (law enforcement officers are immune from claims for damages for enforcing presumptively valid laws). It also properly dismissed the sheriff from the claims for injunctive relief, at the conclusion of trial, because Redner made no showing that the sheriff would enforce ordinances if they were declared unconstitutional.

[4] Redner did not appeal the holding of the district court that Ordinance 88-A51 was a valid, content-neutral time, place and manner regulation. He did appeal the holding of the district court that Citrus County was not estopped from enforcing 88-A51 against him. Redner was unentitled to rely on the inaction of Citrus County in not earlier adopting a zoning ordinance regulating the location of adult entertainment facilities. So, estoppel does not apply. *See City of Miami Beach v. 8701 Collins Ave., Inc.*, 77 So.2d 428, 430 (Fla.1954); *City of Fort Pierce v. Davis*, 400 So.2d 1242, 1244 (Fla.App. 4th Dist.1981); *Pasco County v. Tampa Development Corp.*, 364 So.2d 850, 853 (Fla.App. 2d Dist.1978).

[5] On appeal, Redner chiefly contends that the district court, relying on *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), erred in abstaining from deciding the constitutionality of Ordinances 88-05 and 88-06. First, he contends that *Younger* does not apply because he requested no injunction of on-going state criminal proceedings, but instead requested an injunction of future prosecutions, and because, although he had been arrested twice before he filed his federal complaint, there was no pending state criminal proceeding when he filed for federal relief. In connection with this contention, he notes that the pertinent criminal proceedings were to enforce Ordinance 88-05 and that future criminal prosecutions would be under Ordinance 88-06. Second, if *Younger* abstention would apply, he contends that the bad faith exception should also apply to this case.[5]

In *Younger v. Harris*, the Supreme Court held that abstention is appropriate where federal jurisdiction has been invoked for the purpose of restraining state criminal proceedings; the Court recognized exceptions for bad faith, harassment, or a patently invalid state statute. 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971). In *Samuels v.*

---

[5] In a memorandum of law filed after oral argument to us, Redner says, finally, that even if *Younger* was once applicable, it is no longer applicable because he has now exhausted his state criminal appeals, and there are, thus, no on-going state criminal proceedings now. The issue before us, however, is whether the district court properly abstained, considering the circumstances with which it was presented when it abstained. *See Kennecott Corp. v. Smith*, 637 F.2d 181, 186, 187 (3d Cir.1980) (appellate court reviews question whether district court should have granted relief on day on which it abstained).

Mackell, the Court extended *Younger* to cases in which federal jurisdiction was invoked for the purposes of obtaining declaratory relief when the federal plaintiff is a defendant in a pending state criminal prosecution, if *Younger* would have barred an injunction in the circumstances. 401 U.S. 66, 91 S.Ct. 764, 27 L.Ed.2d 688 (1971). *Younger* was further extended when the Supreme Court held that federal courts may not provide declaratory relief if a state prosecution is commenced against the federal plaintiffs "after the federal complaint is filed but before any proceedings of substance on the merits have taken place in the federal court . . . . " *Hicks v. Miranda,* 422 U.S. 332, 349, 95 S.Ct. 2281, 2292, 45 L.Ed.2d 223 (1975); *see also Doran v. Salem Inn, Inc.,* 422 U.S. 922, 95 S.Ct. 2561, 45 L.Ed.2d 648 (1975) (denial of federal declaratory and injunctive relief in case in which plaintiffs alleged local ordinance violated First and Fourteenth Amendments). A state's trial and appeals process is considered "a unitary system," and *Younger* prevents a federal court from disrupting the process while a case is on appeal. *See New Orleans Public Service, Inc. v. Council of New Orleans,* 491 U.S. 350, ___, 109 S.Ct. 2506, 2518, 105 L.Ed.2d 298 (1989). Thus, as long as a federal challenge to a state statute or local ordinance "relate[s] to pending state proceedings, proper respect for the ability of state courts to resolve federal questions presented in state court litigation mandates that the federal court stay its hand." *Pennzoil Co. v. Texaco, Inc.,* 481 U.S. 1, 14, 107 S.Ct. 1519, 1527, 95 L.Ed.2d 1 (1987).

A. Ordinance 88-05

[6, 7] Applying *Younger* and its progeny to the facts of this case, the district court properly abstained from

deciding the constitutionality of Ordinance 88-05. We reject Redner's suggestion that there was no pending state criminal proceeding against him when he filed for federal relief: before he filed suit in federal court, he had been arrested and taken to jail twice for violating Ordinance 88-05 and, twice, had been released on bond.[6] Because Redner was twice released from jail on bond pending a state trial before he filed the federal suit, state criminal proceedings had begun against him. But even if we accept Redner's contention that, when he filed his suit in federal court, there were no pending state criminal proceedings, abstention was still appropriate because state criminal proceedings were well underway by the time "any proceedings of substance on the merits [had] taken place in federal court." *See Hicks*, 422 U.S. at 349, 95 S.Ct. at 2292. On the same day that the record shows the return of service of the federal complaint on defendants, Redner filed a motion to dismiss the charges in state court; Redner was found guilty in the state court long before the federal district court entered its decision to abstain. Redner's state criminal conviction was on appeal when the federal court decided to abstain.[7]

---

[6] Redner was arrested twice for violating Ordinance 88-05 on March 29, 1988 and was released from jail each time upon posting bond. The section 1983 suit challenging the constitutionality of Ordinance 88-05 (and, as later amended, of 88-06) was filed in federal district court on March 31, 1988.

[7] Redner was convicted on October 6, 1988 in the County Court of Citrus County and was sentenced on October 17, 1988. But, his state appeals were not exhausted until September 28, 1990. The federal district court entered its order of abstention on Ordinances 88-05 and 88-06 on August 25, 1989.

[8] Nor was abstention inappropriate considering the alleged bad faith of Citrus County. A prosecution is undertaken in bad faith when "a prosecution has been brought without a reasonable expectation of obtaining a valid conviction." *Kugler v. Helfant*, 421 U.S. 117, 126 n.6, 95 S.Ct. 1524, 1531 n.6, 44 L.Ed.2d 15 (1975). *See also* Erwin Chemerinsky, *Federal Jurisdiction* § 13.4 at 651 (1989). Redner presents no evidence that the prosecution was brought without a reasonable likelihood of obtaining a valid conviction.[8] As a result, there was no bad faith in prosecuting Redner; and the district court correctly declined to recognize a bad faith prosecution exception to *Younger* abstention.

B. Ordinance 88-06

[9] Ordinance 88-06 is not the ordinance under which Redner was arrested, prosecuted, and convicted. But, Citrus County contends that the district court properly abstained from deciding the merits on Ordinance 88-06. First, the county contends that Ordinance 88-06 is virtually identical to 88-05 in its substantive provisions[9] and

---

[8] The only bad faith that Redner asserts against defendant is the County's enacting an ordinance directed, he alleges, solely at him, one day before he planned to open his adult entertainment facility. Nothing about that act by the county seems to establish, in itself, bad faith. Redner cites no precedent to help his argument.

[9] Redner conceded, at oral argument, that the two ordinances are virtually identical "for all material purposes of constitutional inquiry." We note, however, that there are two substantive provisions in Ordinance 88-06 not present in 88-05.

(Continued on following page)

that, as a consequence, a ruling of a federal court on the constitutionality of 88-06 would have necessarily interfered with the on-going state proceedings because of issue preclusion. Second, Citrus County contends that abstention on Ordinance 88-06 was proper because an injunction against its enforcement would necessarily interfere with, and nullify, a condition of the bond on which Redner was released from jail pending appeal of his convictions.

Abstention is an important federal doctrine. But we note that "[a]bstention from the exercise of federal jurisdiction is the exception, not the rule." *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813, 817, 96 S.Ct. 1236, 1244, 1246, 47 L.Ed.2d 483 (1976). At least, in the absence of a very high probability that a federal decision on 88-06 in this case would lead to issue preclusion in state court, the district court should have declined to abstain.

Ordinance 88-06 and Ordinance 88-05 are extremely similar, but their terms are not identical. The presence in

---

(Continued from previous page)

They are sections 2-5(c)(1)(E) and 2-12(c). Section 2-5(c)(1)(E) states that a person or a legal entity required by the ordinance to obtain a license to operate any business enterprise, profession or activity regulated by the ordinance can be denied a license if that person or legal entity, as a licensee or an agent or employee of a licensee, (a) is convicted of a crime involving moral turpitude committed within the course of the business activity; or (b) is or has been convicted of a felony or first degree misdemeanor directly related to the specific licensed business activity. Section 2-12(c) is a parallel provision relating to the revocation of a license to operate an adult entertainment facility

Ordinance 88-06 of substantive provisions absent from Ordinance 88-05 potentially requires that each of Ordinance 88-06's provisions be construed in the context of these additional substantive provisions. Therefore, even if the federal district court had held Ordinance 88-06 unconstitutional, the state courts might still have properly held that Ordinance 88-05 was constitutional.[10] The federal court decision on 88-06 might have been persuasive authority in the state court, but that such a federal court decree would have inevitably barred a contrary state judgment on the constitutionality of a different ordinance is doubtful. In addition, the state criminal proceeding would not necessarily determine the constitutionality of Ordinance 88-06.[11] The state criminal proceedings could proceed to completion – and, in fact, seemingly have proceeded to completion – without a state court addressing Ordinance 88-06. Therefore, the district court's abstention on Ordinance 88-06, based on *Younger* and its progeny, was improper.

We reject the County's argument that the district court was required to abstain on Ordinance 88-06 because

---

[10] For example, the federal court might have held – or may still hold – 88-06 unconstitutional on the basis of provisions in 88-06 but not in 88-05.

[11] *Cf. Reeves v. McConn*, 631 F.2d 377, 381 n.4 (5th Cir.1980) (constitutional challenge to one subsection of ordinance not barred by *Younger* when there were pending state criminal charges against federal plaintiff for violating different subsection because state court was not required to consider that subsection in criminal proceeding).

of Redner's bond condition.[12] The condition of Redner's appeal bond dictated that Redner "not open business in violation of any Citrus County ordinances." We read this condition to mean "any Citrus County ordinance that is constitutionally valid." The existence of the bond, in itself, adjudicates nothing on the question of ordinance validity. There were no active state court proceedings adjudicating the validity of 88-06 when the district court abstained; put differently, there were no state proceedings to which a federal court could defer about 88-06. It may be true that Redner could have triggered some state proceedings by violating 88-06 and, then, in a bond forfeiture proceeding or in some other state proceeding adjudicated 88-06's validity. But we know of no precedent that allows abstention because there may be, in the uncertain future, state court proceedings on point. *Cf. Steffel v. Thompson*, 415 U.S. 452, 94 S.Ct. 1209, 39 L.Ed.2d 505

---

[12] Redner had been subject to a condition on his pretrial bond that he could only open and operate an adult entertainment facility if he acquired the necessary license or if a court of competent jurisdiction held the ordinance invalid. Because Redner had been tried and convicted by the time the district court had entered its abstention order, the conditions attached to Redner's pretrial bond were – or should have been – irrelevant to the district court's decision to abstain on Ordinance 88-06.

Redner's conviction, however, was still on appeal when the district court abstained, and, consequently, the conditions of his appeal bond were relevant to the district court's decision on Ordinance 88-06.

(1974) (*Younger* abstention inappropriate if state criminal proceedings are threatened, but not pending).[13]

Conclusion

This court affirms the decisions of the district court to abstain on Ordinance 88-05, to dismiss the individual Commissioners and the Sheriff due to their immunity, and to deny equitable estoppel against Citrus County's enforcement of Ordinance 88-A51. We reverse the decision of the district court to abstain on 88-06 and remand for further proceedings.[14]

AFFIRMED in part, REVERSED in part and REMANDED.

---

[13] If we accept the County's argument, a federal decision – or the state decision, for that matter – holding unconstitutional any Citrus County ordinance relating to the operation of a business could be said to interfere with Redner's bond condition. We decline to accept this interpretation.

[14] We note that the district court stayed Redner's claim for damages. To the extent that Redner's damages claim arises from the adoption of Ordinance 88-06, the stay should be dissolved and this claim should be litigated with his other claims on Ordinance 88-06. If Redner's conviction is final, his claim for damages should be dismissed to the extent that it arises from the adoption of Ordinance 88-05.

We also note that respondents requested that we take judicial notice of the outcome of certain state criminal proceedings against Redner. We grant that motion, to the extent that these decisions are generally reported.

APPENDIX B

THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 89-3823

JOE REDNER, Plaintiff-Appellant,

THOMAS GEORGE SECCHAIRI, et al., Plaintiffs,

versus

CITRUS COUNTY, FLORIDA, Defendant-Appellee,

CHARLES S. DEAN, Sheriff of Citrus County, Florida and individually, et al., Defendants

---

On Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC

(Opinion December 18, 1990, 11th Cir., 19___, ___F.2d___).

Before: EDMONDSON and BIRCH, Circuit Judges, and RE*, Chief Judge.

---

* Honorable Edward D. Re, Chief Judge of the U.S. Court of International Trade, sitting by designation.

PER CURIAM:

(X) The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

( ) The Petition(s) for Rehearing are DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ J.L. Edmondson
UNITED STATES CIRCUIT JUDGE

ORD-42
(9/90)

[Stamped: Filed, Court of Appeal, Eleventh Circuit, May 20, 1991, Miguel J. Cortez, Clerk.]

APPENDIX C

28 U.S.C. § 1738. State and Territorial statutes and judicial proceedings; full faith and credit

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

APPENDIX D

ORDINANCE NO. 88 - 05

AN ORDINANCE OF CITRUS COUNTY, FLORIDA, TO BE KNOWN AS THE "ADULT ENTERTAINMENT ORDINANCE"; PROVIDING GENERAL PROVISIONS, FINDINGS OF FACT AND DEFINITIONS; PROVIDING PROVISIONS CONCERNING LICENSING ENTERTAINMENT ESTABLISHMENTS; PROVIDING PROVISIONS CONCERNING PERMITTING OF EMPLOYEES OF ADULT ENTERTAINMENT ESTABLISHMENTS; PROVIDING PROVISIONS CONCERNING REQUIREMENTS FOR ADULT ENTERTAINMENT ESTABLISHMENTS; PROVIDING CRIMINAL PROVISIONS; PROVIDING PROVISIONS REGARDING SUSPENSION AND REVOCATION OF LICENSE; PROVIDING PROVISIONS REGARDING SUSPENSION AND REVOCATION OF PERMIT; PROHIBITING ESTABLISHMENTS FROM OPERATING BETWEEN HOURS OF 2:00 A.M. AND 9:00 A.M.; PROHIBITING HOLES IN WALLS OF ADULT BOOTHS; PROHIBITING THE ALTERATION OF A LICENSE OR PERMIT; PROHIBITING FALSE STATEMENT OR FALSE INFORMATION IN APPLYING FOR A LICENSE OR PERMIT; PROVIDING FOR SEVERABILITY; PROVIDING FOR EMERGENCY ENACTMENT AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CITRUS COUNTY, FLORIDA:

SECTION 1. GENERAL PROVISIONS

Section 1-1. Title. This Ordinance shall be known and may be cited as the "Citrus County Adult Entertainment Ordinance".

Section 1-2. Authority. The Adult Entertainment Ordinance is enacted under the Home Rule Power of Citrus County, Florida, in the interest of the health, peace, safety, morals, and general welfare of the people of Citrus County, and under the authority of Citrus County to regulate the sale and consumption of alcoholic beverages under the Twenty-First Amendment to the Constitution of the United States.

Section 1-3. Scope. The Adult Entertainment Ordinance shall be effective throughout Citrus County, Florida, except that no provision of this Ordinance that conflicts with a provision of an Ordinance of any municipality within Citrus County, Florida, shall be effective within such municipality.

Section 1-4. Construction. The Adult Entertainment Ordinance shall be liberally construed to accomplish its purpose of licensing, regulating and dispersing adult entertainment and related activities. Unless otherwise indicated, all provisions of this Ordinance shall apply equally to all persons, regardless of sex. Masculine pronouns, such as "he", "his", and "him", as employed in this Ordinance, shall also be construed to apply to feminine pronouns and neutral pronouns, unless the context suggests otherwise. Words used in the singular number shall include the plural number, unless the context suggests otherwise.

Section 1-5. Purpose. The intent of the Board of County Commissioners of Citrus County, Florida, in adopting the Adult Entertainment Ordinance is to establish reasonable and uniform regulations that will protect

the health, safety, morals and general welfare of the people of Citrus County, Florida.

Section 1-6. Findings of Fact. Based on evidence and testimony concerning the adverse secondary effects of adult uses on the community presented at public hearings before the Board of County Commissioners of Citrus County, Florida, and on the findings incorporated in the *City of Renton v. Playtime Theaters, Inc.*, 106 S.Ct. 925 (1986); *Coleman A. Young v. American Mini Theaters, Inc.*, 427 U.S. 50, 49 L.Ed.2d 310, 96 S.Ct. 2440, reh. den. (U.S.) 50 L.Ed.2d 155, 97 S.Ct. 191; Summary and presentation of reports, studies and judicial opinions concerning the adverse secondary effects of adult uses on the community; *Northend Cinema, Inc. v. Seattle*, 90 Wash. 2d 709, 585 P.2d 1153 (1978); *A Report on Zoning and Other Methods of Regulating Adult Entertainment in Amarillo*, Texas dated September 12, 1977; *Regulation of Criminal Activity and Adult Businesses*, City of Phoenix, May, 1979; Findings of the City Planning Commission for the City of New York dated January 26, 1977; *Detroit's Approach to Regulating the "Adult" Uses* Presented to American Institute of Planners Annual Conference, October 10, 1977; *Adult Entertainment Businesses in Indianapolis*, An Analysis, 1987; and a presentation of the Citrus County Sheriff officers detailing the potential criminal activities associated with adult uses in Citrus County:

(a) Establishments exist or may exist within Citrus County, Florida, where books, magazines, motion pictures, prints, photographs, periodicals, records, novelties and/or devices which depict, illustrate, describe or relate to specified sexual activities are possessed, displayed, exhibited, distributed and/or sold.

(b) Establishments exist or may exist within Citrus County, Florida:

(1) where the superficial tissues of one person are manipulated, rubbed, stroked, kneaded, and/or tapped by a second person, accompanied by the display or exposure of specified anatomical areas;

(2) where dancers, entertainers, performers, or other individuals, who, for any form of commercial gain, perform or are presented while displaying or exposing any specified anatomical area; or

(3) where straddle dancing occurs.

(c) The activities described in subsections (a) and (b) occur at establishments for the purpose of making a profit, and, as such, are subject to regulation by Citrus County, Florida, in the interest of the health, safety, morals and general welfare of the people of Citrus County.

(d) When the activities described in subsections (a) and (b) are present in establishments within Citrus County, Florida, other activities which are illegal, immoral, or unhealthful tend to accompany them, concentrate around them, and be aggravated by them. Such other activities include, but are not limited to, prostitution, pandering, solicitation for prostitution, lewd and lascivious behavior, exposing minors to harmful materials, possession, distribution and transportation of obscene materials, sale and possession of controlled substances, and violent crimes against persons and property.

(e) When the activities described in subsections (a) and (b) are present in establishments within Citrus

County, Florida, they tend to attract an undesirable number of transients, blight neighborhoods, adversely affect neighboring businesses, lower property values, promote crime, particularly the kinds detailed in subsection (d) and ultimately lead residents and businesses to move to other locations.

(f) The establishments in which the activities described in subsections (a) and (b) occur are usually constructed, in part or in whole, of substandard materials, and are usually maintained in a manner reflecting disregard for the health and safety of the occupants.

(g) The activities described in subsections (a) and (b) frequently occur in establishments concurrent with the sale and consumption of alcoholic beverages.

(h) The concurrence of the sale and consumption of alcoholic beverages with the activities described in subsections (a) and (b) leads to an increase in criminal activity, moral degradation, and disturbances of the peace and order of Citrus County, Florida.

(i) The concurrence of the sale and consumption of alcoholic beverages with the activities described in subsections (a) and (b) is hazardous to the health and safety of those persons in attendance, depreciates the value of adjoining property, harms the economic welfare of Citrus County, Florida, and adversely affects the public's interest in the quality of life, tone of commerce, and community environment in Citrus County.

(j) In order to preserve and safeguard the health, safety, morals and general welfare of the people of Citrus County, Florida, it is necessary and advisable for Citrus

County, Florida, to regulate the sale and consumption of alcoholic beverages at establishments where the activities described in subsections (a) and (b) occur.

(k) Employees of establishments at which the activities described in subsections (a) and (b) occur engage in a higher incidence of certain types of criminal behavior than employees of other establishments.

(l) Physical contact within establishments at which the activities described in subsections (a) and (b) occur between employees exhibiting specified anatomical areas and customers poses a threat to the health of both and promotes the spread of communicable and social diseases.

(m) In order to preserve and safeguard the health, safety, morals, and general welfare of the people of Citrus County, Florida, it is necessary and advisable for Citrus County, Florida, to regulate the conduct of owners, managers, operators, agents, employees, entertainers, performers, and customers at establishments where the activities described in subsections (a) and (b) occur.

(n) The potential dangers to the health, safety, morals, and general welfare of the people of Citrus County, Florida, posed by permitting an establishment at which the activities described in subsections (a) and (b) occur to operate without first obtaining a license under this Ordinance are so great as to require the licensure of such establishments prior to their being permitted to operate.

(o) Requiring employees of establishments at which the activities described in subsections (a) and (b) occur to

obtain an adult entertainment permit before beginning to work in such establishments will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects, by preventing minors from working in such establishments, and by making it easier for health officials to control the spread of communicable and social diseases in such establishments.

(p) Prohibiting establishments at which the activities described in subsections (a) and (b) occur from operating within close proximity of education institutions, religious institutions, areas zoned for residential use, and parks, at which children are customarily found, will serve to protect children from the adverse affects of the activities that accompany such establishments.

(q) Personal advertising within close proximity of public thoroughfares poses a traffic hazard and a threat to the safety of people using those thoroughfares.

(r) "Straddle dancing" does not contain any element of communication, and is therefore conduct rather than expression.

(s) "Straddle dancing" in establishments poses a threat to the health of the participants and promotes the spread of communicable and social disease.

Section 1A-7. Definitions. In the Adult Entertainment Ordinance, unless the context suggests otherwise:

(a) "Adult Bookstore" means an establishment which sells or rents adult material, unless the adult material is accessible only by employees and either the gross income from the sale or rental of adult material comprises

less than ten percent (10%) of the gross income from the sale or rental of goods or services at the establishment or the individual items of adult material offered for sale or rental comprises less than twenty-five percent (25%) of the individual items publicly displayed at the establishment as stock in trade. It is an affirmative defense to an alleged violation of this Ordinance regarding operating an adult bookstore without an adult entertainment license if the alleged violator shows that the adult material is accessible only by employees and either the gross income from the sale or rental of adult material comprises less than ten percent (10%) of the gross income from the sale or rental of goods or services at the establishment, or the individual items of adult material offered for sale or rental comprise less than twenty-five percent (25%) of the individual items publicly displayed at the establishment as stock in trade.

(b) "Adult Booth" means a small enclosure inside an adult entertainment establishment accessible to any person, regardless of whether a fee is charged for access. The term "adult booth" includes, but is not limited to, a "peep show" booth, or other booth used to view "adult material". The term "adult booth" does not include a foyer through which any person can enter or exit the establishment, or a restroom.

(c) "Adult Dancing Establishment" means an establishment where employees display or expose specified anatomical areas to others, regardless of whether the employees actually engage in dancing.

(d) "Adult Entertainment Establishment" means an adult theater, an adult bookstore, or an adult dancing

establishment operated for commercial or pecuniary gain. ("Operated for commercial or pecuniary gain" shall not depend upon actual profit or loss. Also, "operated for commercial or pecuniary gain" shall be presumed where the establishment has an occupational license.) An establishment with an adult entertainment license is presumed to be an adult entertainment establishment.

(e) "Adult Material" means any one or more of the following, regardless of whether it is new or used:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations, or recordings, or other audio matter, which have as their primary or dominant theme matter depicting, illustrating, describing or relating to specified sexual activities or specified anatomical areas; or

(2) Instruments, novelties, devices or paraphernalia which are designed for use in connection with specified sexual activities.

(f) "Adult Motel" means any motel, hotel, boarding house, rooming house or other place of temporary lodging which includes the word "adult" in any name it uses or otherwise advertises the presentation of films, motion pictures, video cassettes, slides or other photographic reproductions, which have as their primary or dominant theme matters depicting, illustrating or relating to specified sexual activities or specified anatomical areas. The term "adult motel" is included within the definition of "adult theater".

(g) "Adult Theater" means an establishment which, except as set forth in the final sentence of this paragraph, consists of an enclosed building, or a portion or part of an enclosed building, or an open-air area used for viewing by persons of films, motion pictures, video cassettes, slides, or other photographic reproductions which have as their primary or dominant theme matters depicting, illustrating or relating to specified sexual activities or specified anatomical areas. "Adult motels" are included within the definition of "adult theater". An establishment which has "adult booths" is considered to be an "adult theater".

(h) "Alcoholic Beverage" means a beverage containing more than one percent (1%) of alcohol by weight.

(1) It shall be prima-facie evidence that a beverage is an alcoholic beverage if there is proof that the beverage in questions was or is known as whiskey, moonshine whiskey, shine, rum, gin, tequila, vodka, scotch, scotch whiskey, brandy, beer, malt liquor, or by any other similar name or names, or was contained in a bottle or can labeled as any of the above names, or a name similar thereto, and the bottle or can bears the manufacturer's insignia, name, or trademark.

(2) Any person who, by experience in the handling of alcoholic beverages, or who by taste, smell, or drinking of such alcoholic beverages has knowledge of the alcoholic nature thereof, may testify as to his opinion about whether such beverage is an alcoholic beverage.

(i) "Board" means the Board of County Commissioners of Citrus County, Florida.

(j) "County Administrator" means the chief administrative officer or his designee.

(k) "Conviction" means a determination of guilt resulting from plea or trial, regardless of whether adjudication was withheld or whether imposition of sentence was suspended.

(l) "Department" means the Building Department, Fire Prevention Division, Health Department, Sheriff, Zoning and Permits Division, or the Department of Development Services, including the respective director, employees, and agents thereof.

(m) "Educational Institution" means a premises or site upon which there is an institution of learning for minors, whether public or private, which conducts regular classes and/or courses of study required for eligibility to certification by, accreditation to, or membership in the State Department of Education of Florida, Southern Association of Colleges and Secondary Schools, or the Florida Council of Independent Schools. The term "educational institution" includes a premises or site upon which there is a nursery school, kindergarten, elementary school, junior high school, senior high school, or any special institution of learning. However, the term "educational institution" does not include a premises or site upon which there is a vocational institution, professional institution or an institution of higher education, including a community college, junior college, four year college or university.

(n) "Employee" means a person who works or performs in an adult entertainment establishment, irrespective of whether said person is paid a salary or wage by the owner or manager of the premises.

(o) "Establishment" means a site or premises, or portion thereof, upon which certain activities or operations are being conducted for commercial or pecuniary gain. ("Operated for commercial or pecuniary gain" shall not depend upon actual profit or loss. Also, "operated for commercial or pecuniary gain" shall be presumed where the establishment has an occupational license.)

(p) "Inspector" means a respective employee of the Health Department, Building Department, Zoning and Permits Division, Sheriff, or Fire Prevention Division who inspects premises licensed under this Ordinance and takes or requires the actions authorized by this Ordinance in case of violations being found on licensed premises, and who also inspects premises seeking to be licensed under this Ordinance and takes or requires corrections of unsatisfactory conditions found on the premises.

(q) "Licensee" means any person whose application for an adult entertainment establishment has been granted and who owns, operates or controls the establishment.

(r) "Operator" means any person who engages in or performs any activity which is necessary to or which facilitates the operation of an adult entertainment establishment, including but not limited to the licensee, manager, owner, doorman, bartender, disc jockey, sales clerk, ticket taker, movie projectionist, or supervisor.

(s) "Park" means a tract of land within a municipality or unincorporated area which is kept for ornament and/or recreation and which is maintained as public property.

(t) "Permittee" means a person who has obtained an adult entertainment permit pursuant to SECTION 3 of this Ordinance.

(u) "Person" includes, but is not limited to, an individual, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other or any other similar entity.

(v) "Private performance" means the display or exposure of any specified anatomical area by an employee at an adult entertainment establishment to a person other than another employee while the person is in an area not accessible during such display to all other persons in the establishment, or which the person is in an area in which the person is totally or partially screened or partitioned during such display from the view of all persons outside the area.

(w) "Religious institution" means a premises or site which is used primarily or exclusively for religious worship and related activities.

(x) "Specified anatomical areas" means:

(1) less than completely and opaquely covered:

(A) human genitals or pubic region; or

(B) cleavage of the human buttocks; or

(C) that portion of the human female breast encompassed within an area falling below the horizontal

line one would have to draw to intersect a point immediately above the top of the areola (the colored ring around the nipple). This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areola is not so exposed.

(2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(y) "Specified criminal act" means:

(1) A criminal violation of this Ordinance;

(2) Any felony;

(3) An offense under Chapter 794, Florida Statutes (Sexual Battery);

(4) An offense under Chapter 796, Florida Statutes (Prostitution);

(5) An offense under Chapter 800, Florida Statutes (Lewdness; Indecent Exposure);

(6) An offense under Chapter 826, Florida Statutes (Bigamy; Incest);

(7) An offense under Chapter 847, Florida Statutes (Obscene Literature; Profanity); or

(8) An offense under an analogous statute of a state other than Florida, or under an analogous ordinance of another county or city.

(z) "Specified sexual activities" means;

(1) human genitals in a state of sexual stimulation, arousal or tumescence; or

(2) acts of human analingus, beastiality, buggery, cunnilingus, coprophagy, coprophilia, fellation, flagellation, masochism, masturbation, necrophilia, pederasty, pedophilia, sadism, sadomasochism, sapphism, sexual intercourse, sodomy, urolagnia or zooerasty; or

(3) fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast; or

(4) excretory functions as part of or in connection with any of the activities set forth in subsections (1) through (3).

(aa) "Straddle dance" also known as a "lap dance" or "face dance", means the use by an employee, of any part of his or her body to touch the genital or pubic area of a person while at the establishment, or the touching of the genital or pubic area of any employee with a person while at the establishment. It shall be a "straddle dance" regardless of whether the "touch" or "touching" occurs while the employee is displaying or exposing any specified anatomical area. It shall also be a "straddle dance" regardless of whether the "touch" or "touching" is direct or through a medium.

Section 1-8. Regulation of Obscenity Subject to State Law. It is not the intent of the Board to legislate with respect to matters of obscenity. These matters are regulated by state law.

Section 1-9. Regulation of Massage Establishments Subject to State Law. It is not the intent of the Board to

legislate with respect to matters of massage establishments. These matters are regulated by state agency, the Department of Professional Regulation, Board of Massage, and by state law, Chapter 480, Florida Statutes.

Section 1-. Severability. If any portion of this Ordinance, or any application thereof is declared to be void, unconstitutional or invalid for any reason, such portion or provision, or this application thereof, shall be severable from this Ordinance. The remaining portions and provisions of this Ordinance, and all applications thereof shall remain in full force and effect. No void, unconstitutional or invalid portion or proscribed provision, or application thereof, was an inducement to the enactment of this Ordinance.

SECTION 2. LICENSING PROVISIONS

Section 2-1. Responsibilities of Board, County Administrator and Departments. Ultimate responsibility for the administration of this Ordinance is vested in the Board. The County Administrator or his designee is responsible for granting, denying, revoking, renewing, suspending, and cancelling adult entertainment licenses for proposed or existing adult entertainment establishments. The Sheriff is responsible for verifying information contained on an application pursuant to SECTION 2-3(b)(1)-(5) of this Ordinance, for inspecting any proposed, licensed or non-licensed establishment in order to ascertain whether it is in compliance with applicable criminal statutes and ordinances, and for enforcing applicable criminal statutes and ordinances, including those set forth at SECTION 5 of this Ordinance. In addition, the

Sheriff is responsible for reviewing permit applications, as provided in SECTION 3. The Building Department is responsible for inspecting any proposed establishment for which a license is being applied for or any licensed establishment in order to ascertain whether it complies with or is complying with this Ordinance and all applicable building codes, statutes, ordinances, and regulations in effect in Citrus County, Florida. The Division of Fire Prevention is responsible for inspecting any proposed establishment for which a license is being applied for or any licensed establishment in order to ascertain whether it complies with or is complying with SECTION 4 of this Ordinance and all applicable fire codes, statutes, ordinances and regulations in Citrus County. The Health Department is responsible for any proposed establishment for which a license is being applied for or any licensed establishment in order to ascertain whether it complies with or is complying with SECTION 4 of this Ordinance and all applicable health codes, statutes, ordinances, and regulations in effect in Citrus County. In addition, the Health Department is responsible for reviewing permit applications, as provided in SECTION 3. The Zoning and Permits Division of the Department of Development Services is responsible for ascertaining whether a proposed establishment for which a license is being applied for complies with all locational requirements of this Ordinance, applicable portions of this Ordinance, all applicable zoning regulations in effect in Citrus County, and whether a licensed establishment is complying with SECTION 5 of this Ordinance and all applicable zoning regulations and land use laws in effect in Citrus County. The County Administrator is responsible for

granting, denying, renewing, canceling, suspending, and revoking permits for proposed or current permittees in accordance with SECTION 3 of this Ordinance.

Section 2-2. Adult Entertainment License Required: Classifications of.

(a) Requirement. No adult entertainment establishment shall be permitted to operate without having been first granted an adult entertainment license by the County Administrator under this Ordinance.

(b) Classifications. Adult entertainment establishment licenses referred to in this Ordinance shall be classified as follows:

(1) adult bookstore;

(2) adult theater; and

(3) adult dancing establishment.

(c) Single Classification of License. Any adult entertainment license for a particular adult entertainment establishment shall be limited to one classification of license.

Section 2-3. Application Required for Adult Entertainment License; Contents of; Application Fee; Rejection of Incomplete Application; Consent by Applicant.

(a) Required. Any person desiring to operate an adult entertainment establishment shall file with the County Administrator a sworn license application on a standard application form supplied by the County Administrator.

(b) Contents of Application. The completed application shall contain the following information and shall be accompanied by the following documents:

(1) if the applicant is:

(A) an individual, the individual shall state his legal name and any aliases and submit satisfactory proof that he is eighteen (18) years of age; or

(B) a partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and, if in existence, a copy of the partnership agreement; or

(C) a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing, the names and capacity of all officers, directors and principal stockholders, and, if applicable, the name of the registered corporate agent and the address of the registered office for service of process;

(2) if the applicant intends to conduct the establishment under a name other than that of the applicant, the establishment's fictitious name and the county of registration under Section 865.09, Florida Statutes (1987);

(3) whether the applicant or any of the other individuals listed pursuant to subparagraph (1) has, within the ten (10) year period immediately preceding the date of the application, been convicted of a specific criminal act, and, if so, the specified criminal act involved, the date of conviction and the place of conviction;

(4) whether the applicant or any of the other individuals listed pursuant to subparagraph (1) has had a previous license under this Ordinance suspended or revoked, including the name and location of the establishment for which the license was suspended or revoked, as well as the date of the suspension or revocation, and whether the applicant or any other individuals listed pursuant to subparagraph (1) has been a partner in a partnership or an officer, director or principal stockholder of a corporation whose license under this Ordinance has previously been suspended or revoked, including the name and location of the establishment for which the license was suspended or revoked, as well as the date of the suspension or revocation;

(5) whether the applicant or any other individuals listed pursuant to subparagraph (1) holds any other licenses under this Ordinance and, if so, the names and locations of such other licensed establishments;

(6) the single classification of license for which the applicant is filing;

(7) the location of the proposed establishment, including a legal description of the property site, and a legal street address;

(8) the names of the employees for the proposed establishment, if known, or, if presently unknown a statement to that effect;

(9) the applicant's mailing address; and

(10) a site plan drawn to appropriate scale of the proposed establishment, including, but not limited to; (A) all property lines, right-of-way, and the location of

the buildings, parking areas and spaces, curb cuts, and driveways; (B) all windows, doors, entrances and exits, fixed structural features, walls, stages, partitions, projection booths, admission booths, adult booths, concession booths, stands, counters and similar structures; (C) all proposed improvements or enlargements to be made, which shall be indicated and calculated in terms of percentage of increase in floor size.

(c) Application Fee. Each application shall be accompanied by a non-refundable fee of Two Hundred Dollars ($200.00). If the application for a license is approved and a license is granted, the fee shall be applied as a credit towards the annual license fee required for the first year pursuant to Section 2-7 of this Ordinance.

(d) Rejection of Incomplete Application. In the event the County Administrator determines or learns at any time that the applicant has not properly completed the application for a proposed establishment, he shall promptly notify the applicant of such fact and shall automatically reject the application.

(e) Consent. By applying for a license under this Ordinance, the applicant shall be deemed to have consented to the provisions of this Ordinance and to the exercise by the County Administrator and the Departments of their respective responsibilities under this Ordinance.

Section 2-4. Investigation of Application.

(a) Upon receipt of the application properly filed with the County Administrator and upon payment of the

non-refundable application fee, the County Administrator shall immediately stamp the application as received and shall immediately thereafter send photocopies of the application to the Sheriff, the Department of Development Services, Fire Prevention, and the Health Department. Each department shall promptly conduct an investigation of the applicant, application and the proposed establishment in accordance with its responsibilities summarized in Section 2-1 of this Ordinance. At the conclusion of its investigation, each department shall indicate on the photocopy of the application its approval or disapproval of the application, date it, sign it, and, in the event it disapproves, it shall so state its reasons.

(b) A Department shall disapprove of an application if it finds that the proposed establishment will be in violation of any provision of this Ordinance or of any building, fire, health, or zoning statute, code, ordinance, or regulation. After its indication of approval or disapproval, each department shall immediately return the photocopy of the application to the County Administrator.

Section 2-5. Grant; Denial.

(a) Time Period for Granting or Denying License.

(1) The County Administrator shall grant or deny an application for an adult dancing establishment within forty-five (45) days from the date of its proper filing. Upon the expiration of the forty-five (45) day period the applicant may be permitted to begin operating the establishment for which a license is sought, unless and until the County Administrator notifies the applicant

of a denial of the application and states the reason(s) for the denial.

(2) The County Administrator shall grant or deny an application for an adult bookstore or adult theater within fourteen (14) days from the date of proper filing. Upon the expiration of the fourteenth (14th) day, the applicant may be permitted to begin operating the establishment for which a license is sought, unless and until the County Administrator notifies the applicant of a denial of the application and states the reason(s) for that denial.

(b) Granting of Application for License. If each of the departments has approved of the application, the County Administrator shall grant the application, notify the applicant of the granting, and issue the license to the applicant upon payment of the appropriate annual license fee as provided in Section 2-6 and 2-7, with credit as provided in Section 2-3(c).

(c) Denying of Application for License.

(1) The County Administrator shall deny the application for any of the following reasons:

(A) any of the Departments, excluding the Sheriff, has disapproved of the application;

(B) the application contains material false information;

(C) the applicant or any of the other individuals listed pursuant to Section 2-3(b)(1) has a license under this Ordinance which has been suspended or revoked;

(D) the granting of the application would violate a statute or ordinance or an order from a court of law which effectively prohibits the applicant from obtaining an adult entertainment establishment license.

(2) If the County Administrator denies the application, he shall notify the applicant of the denial, and state the reason(s) for the denial.

(3) If a person applies for a license at a particular location within a period of nine (9) months from the date of denial of a previous application for a license at the location, and there has not been an intervening change in the circumstances which will probably lead to a different decision regarding the former reason(s) for denial, the application shall be rejected.

Section 2-6. Contents of License; Terms of License; Renewals; Expiration; Cancellation.

(a) Contents. An adult entertainment license shall state on its face the name of the licensee, the name of the establishment, the street address of the establishment, the classification(s) of the license, the date of issuance, and the date of expiration.

(b) Terms. All licenses issued under this Ordinance shall be annual licenses which shall commence running on October 1, on which date they shall have been paid for, and shall expire on September 30 of the following year. If a license is issued after October 1, but by March 31 of the following year, the applicant shall pay the appropriate license fee. If a license is issued after March 31, but by October 1 of the same year, the applicant shall pay one-half the appropriate license fee.

(c) Renewals. Licenses shall be renewed annually. Subject to other provisions of this Ordinance, a licensee under this Ordinance shall be entitled to a renewal of his annual license from year to year, as a matter of course, by October 1 by presenting the license for the previous year and by paying the appropriate license fee.

(d) Expiration. A license that is not renewed under this Ordinance by October 1 of each year shall expire. An expired license may be renewed by November 30 of the same year upon presentation of an affidavit stating that no adult entertainment activity has taken place at the establishment subsequent to expiration, upon payment of the appropriate license fee, and upon payment of a penalty of ten percent (10%) of the appropriate license fee for the month of October, or fraction thereof, and an additional penalty of five percent (5%) of the appropriate license fee for the month of November, or fraction thereof.

(e) Cancellation. All expired licenses not renewed by November 30 shall be canceled summarily by the County Administrator.

Section 2-7. Annual License Fees; Levy of; Regulatory in Nature.

(a) Levy of License Fees. There are hereby levied the following annual license fees under this Ordinance for an adult entertainment establishment;

(1) an establishment having a license for only an adult bookstore - seven hundred fifty dollars ($750.00);

(2) an establishment having a license for only an adult theater, as follows:

(A) having only adult booths thirty-five dollars ($35.00) for each booth; or

(B) having only a hall or auditorium three dollars and fifty cents ($3.50) for each seat; or

(C) having only an area outdoors designed to permit viewing by customers seated in vehicles - three dollars and fifty cents ($3.50) for each parking space; or

(D) having a combination of (A), (B), and/or (C) - the cumulative license fee applicable to each under (A), (B) and (C);

(E) adult motel - seven hundred fifty dollars ($750.00);

(3) an establishment having a license for only an adult dancing establishment - seven hundred fifty dollars ($750.00);

(4) an establishment having a license for two classifications - eight hundred dollars ($800.00);

(5) an establishment having a license for three classifications - nine hundred dollars ($900.00).

(b) License Fees are Regulatory in Nature. The annual license fees collected under this Ordinance are declared to be regulatory fees which are collected for the purpose of examination and inspection of adult entertainment establishments under this Ordinance and the administration thereof. The regulatory fees are in addition to and not in lieu of the occupational license taxes imposed by other Ordinances of Citrus County, Florida.

Section 2-8. Records and Reports; Consent by Licensee.

(a) Records and Reports. Each licensee shall keep such records and make such reports as may be required by the County Administrator and the Departments to implement this Ordinance and to carry out its purpose.

(b) Consent. By holding a license under this Ordinance, the licensee shall be deemed to have consented to the provisions of this Ordinance and to the exercise by the County Administrator and the Departments of their respective responsibilities under this Ordinance.

Section 2-9. Transfer of License.

(a) Requirements for Transfer. A licensee shall not transfer his license to another person, and thereby surrender possession, control, and operation of the licensed establishment to such other person, unless and until such other person satisfies the following requirements:

(1) obtains an amendment to the license from the Ordinance which provides that he is now the licensee, which amendment may be obtained only if he has completed and properly filed an application with the County Administrator setting forth the information called for under Section 2-3(b)(1)-(5), and (9), and the application has been granted by the County Administrator after approval by the Sheriff's Department; and

(2) in the event he has purchased the licensed establishment from the licensee, adduces satisfactory proof that the sale was bona fide; and

(3) pays a transfer fee of ten percent (10%) of the appropriate annual license fee.

(b) Effect of Suspension or Revocation Procedures. No license may be transferred pursuant to subsection (a) when the County Administrator has notified the licensee that suspension of revocation proceedings have been or will be brought against the licensee.

(c) No Transfer to Different Location. A licensee shall not transfer his license to another location.

(d) Attempted Improper Transfer Void; License Abandoned. Any attempted transfer of a license either directly or indirectly in violation of this Section is hereby declared void, and the license shall be deemed abandoned and shall revert to the County Administrator.

Section 2-10. Changing Name of Establishment. No licensee may change the name of an adult entertainment establishment unless and until he satisfies each of the following requirements.

(a) gives the County Administrator thirty (30) days notice in writing of the proposed name change;

(b) pays the County Administrator a three dollar ($3.00) change-of-name fee; and

(c) complies with Section 865.09, Florida Statutes (1985).

Section 2-11. Suspension of License.

(a) Violation of a Building, Fire, Health, or Zoning Statute, Code, Ordinance or Regulation. In the event a Department learns or finds upon sufficient cause that a licensed adult entertainment establishment is operating in violation of a building, fire, health, or zoning statute, code, ordinance or regulation, whether federal, state or

local, contrary to the respective general requirements of Section 4-1(a),(b),(c), or (d), the Department shall promptly notify the licensee of the violation and shall allow the licensee a seven (7) day period in which to correct the violation. If the licensee fails to correct the violation before the expiration of the seven (7) day period the Department shall notify the County Administrator, who shall forthwith suspend the license, and shall notify the licensee of the suspension. The suspension shall remain in effect until the Department notifies the County Administrator in writing that the violation of the provision in question has been corrected.

(b) Illegal Transfer. In the event the County Administrator learns or finds upon sufficient cause that a licensee engaged in a license transfer contrary to Section 2-9, he shall forthwith suspend the license, and notify the licensee of the suspension. The suspension shall remain in effect until the County Administrator is satisfied that the requirements of Section 2-9(a) have been met.

(c) Convictions for Violations of SECTION 5 of this Ordinance.

(1) In the event three (3) or more violations of SECTION 5 of this Ordinance occur at an adult entertainment establishment within a two (2) year period, and convictions result from at least three (3) of the violations, the County Administrator shall, upon the date of the third conviction, suspend the license, and notify the licensee of the suspension. The suspension shall remain in effect for a period of thirty (30) days.

(2) In the event one (1) or more violations of SECTION 5 of this Ordinance occur at the establishment

within a period of two (2) years from the date of the violation from which the conviction resulted for which the license was suspended for thirty (30) days under subsection (c)(1), but not including any time during which the license was suspended for thirty (30) days, and a conviction results from one (1) or more of the violations, the County Administrator shall, upon the date of the first conviction, suspend the license again, and notify the licensee of the suspension. The suspension shall remain in effect for a period of ninety (90) days.

(3) In the event one (1) or more violations of SECTION 5 of this Ordinance occur within a period of two (2) years from the date of the violation from which the conviction resulted for which the license was suspended for ninety (90) days under subsection (c)(2), but not including any time during which the license was suspended for ninety (90) days, and a conviction results from one (1) or more of the violations, the County Administrator shall, upon the date of the first conviction, suspend the license again, and notify the licensee of the suspension. The suspension shall remain in effect for a period of one hundred eighty (180) days.

(4) The transfer of renewal of a license pursuant to this Ordinance shall not defeat the terms of subsection (c)(1)-(3).

(d) Effective Date of Suspension. All periods of suspension shall begin sixteen (16) days after the date the County Administrator mails the notice of suspension to the licensee or on the date the licensee delivers his license to the County Administrator, whichever occurs first.

Section 2-12. Revocation of License.

(a) False Information. In the event the County Administrator learns or finds upon sufficient cause that a license was granted based upon false information, misrepresentation of fact, or mistake of fact, he shall forthwith revoke the license, and notify the licensee of the revocation.

(b) Convictions for Violation of SECTION 5 of this Ordinance.

(1) In the event one (1) or more violations of SECTION 5 of this Ordinance occur at an adult entertainment establishment which has had a license suspended for a period of one hundred eighty (180) days pursuant to Section 2-9(c)(3), and the violation(s) occur within a period of two (2) years from the date of the violation from which the conviction resulted for which the license was suspended for one hundred eighty (180) days, but not including any time during which the license was suspended for one hundred eighty (180) days, the County Administrator shall forthwith revoke the license, and notify the licensee of the revocation.

(2) The transfer or renewal of a license pursuant to this Ordinance shall not defeat the terms of subsection (b)(1).

(c) Effect of Revocation. If a license is revoked, the licensee shall not be allowed to obtain another adult entertainment license for a period of ten (10) years and no license shall be issued again to any other person for the location upon which the adult entertainment establishment was situated.

(d) Effective Date of Revocation. The revocation shall take effect sixteen (16) days after the date the County Administrator mails the notice of revocation to the licensee or on the date the licensee delivers his license to the County Administrator, whichever happens first.

SECTION 3. PERMITTING PROVISIONS

Section 3-1. Adult Entertainment Permit Required.

(a) Subject to subsection (b), no individual may work in an adult entertainment establishment without having applied for and having been granted a temporary or permanent adult entertainment permit from the County Administrator under this Ordinance.

(b) An individual who is to engage exclusively in performing janitorial or maintenance services at an adult entertainment establishment, or an individual who is to engage exclusively in performing barbering or cosmetology pursuant to a license issued under, respectively, Chapters 476 or 477, Florida Statutes (1985), is exempt from subsection (a).

Section 3-2. Application Requirement for Adult Entertainment Permit; Contents of; Application Fee; Rejection of Incomplete Application; Consent by Applicant.

(a) Required. Any individual desiring to work in an adult entertainment establishment shall file with the County Administrator a sworn permit application on a standard application form supplied by the County Administrator.

(b) Contents of Application. The completed application shall contain the following information and shall be accompanied by the following documents:

(1) The applicant shall state his legal name and any aliases;

(2) The applicant shall submit satisfactory proof that he is at least eighteen (18) years of age, and a photocopy of such proof shall be retained by the County Administrator;

(3) The applicant shall furnish a set of his fingerprints which have been taken by the Sheriff;

(4) The applicant shall present a recent color photograph of himself which has been taken by the County Administrator;

(5) The applicant shall state his mailing address and, if different, his address of residence;

(6) The applicant shall reveal his driver's license number;

(7) The applicant shall state whether he has, within the ten (10) year period immediately preceding the date of the application, been convicted of a specified criminal act, and if so, the specified criminal act involved, the date of conviction, and the place of conviction;

(8) The applicant shall indicate whether he or she has had a previous permit under this Ordinance which has been suspended or revoked, and, if so, the date of the suspension or revocation;

(9) Any additional information which the County Administrator deems necessary to effectuate the language and purpose of this Ordinance.

(c) Application Fee. Each application for a permit shall be accompanied by a non-refundable fee of fifty dollars ($50.00). If the application for a permit is approved and a permit is granted, the fee shall be applied as a credit towards the permit fee required pursuant to Section 2-7 of this Ordinance.

(d) Rejection of Incomplete Application. In the event the County Administrator determines or learns at any time the applicant has not properly completed the application for a permit, he shall promptly notify the applicant of such fact, and shall automatically reject the application.

(e) Consent. By applying for a permit under this Ordinance, the applicant shall be deemed to have consented to the provisions of this Ordinance and to the exercise by the County Administrator, the Sheriff and, if applicable, the Health Department, of their respective responsibilities under this Ordinance.

Section 3-3. Temporary Permit. The County Administrator shall issue a temporary permit to an applicant on the date that the applicant properly files an application. The temporary permit shall automatically expire after fourteen (14) days.

Section 3-4. Investigation of Application. Upon receipt of an application properly filed with the County Administrator and upon payment of the non-refundable application fee, the County Administrator shall immediately

stamp the application as received and shall immediately thereafter send a fingerprint card to the Sheriff, and, if the applicant has indicated an intention to work in an adult dancing establishment, notify the Health Department of the applicant's name and address. The County Administrator, and, if applicable, the Health Department, shall promptly conduct an investigation of the applicant in accordance with their respective responsibilities under Section 2-1 of this Ordinance.

Section 3-5. Grant; Denial.

(a) Time Period for Granting or Denying Permit. The County Administrator shall grant or deny any application within fourteen (14) days from the date of its proper filing.

(b) Granting of Permit. If the Sheriff, the County Administrator, and, if applicable, the Health Department, have each approved of the application, the County Administrator shall grant the application, notify the applicant of the granting, and issue a permit to the applicant.

(c) Denying of Permit.

(1) The County Administrator shall deny the application for any of the following reasons:

(A) the applicant is less than eighteen (18) years of age;

(B) the application contains material false information;

(C) the applicant has had a previous permit under this Ordinance which has been suspended or revoked; or

(D) the granting of the application would violate a statute or ordinance or an order from a court of law which prohibits the applicant from obtaining an adult entertainment permit.

(2) If the County Administrator denies the application, it shall notify the applicant of the denial, and state the reason(s) for the denial.

Section 3-6. Contents of Permit; Scope; Term of Permit; Renewals; Expiration; Cancellation.

(a) Contents. The permit shall contain the following:

(1) The permitee's legal name and any aliases;

(2) The permitee's residential address;

(3) The permitee's sex;

(4) The permittee's birth date;

(5) The permittee's signature;

(6) The color photograph of the permittee which was taken by the County Administrator;

(7) The expiration date of the permit; and

(8) The signature of the County Administrator.

(b) Scope. The permit shall entitle the permittee to work in any adult entertainment establishment.

(c) Term. All permits issued under this Ordinance shall remain valid for two (2) years from the date of issuance.

(d) Renewal. Permits shall be renewed on or before two (2) years from the date of issuance. A permittee shall be entitled to a renewal of his or her permit, as a matter of course, upon payment of a fifty dollar ($50.00) fee.

(e) Expiration. A permit that is not renewed on or before two (2) years from the date of issuance shall expire. An expired permit may be renewed within thirty (30) days upon presentment of an affidavit by the permittee stating that he has not engaged in any work at any adult entertainment establishment subsequent to expiration, upon payment of the permit fee of fifty dollars ($50.00), and upon payment of a penalty fee of ten dollars ($10.00).

(f) Cancellation. All expired permits not renewed within thirty (30) days shall be canceled summarily by the County Administrator.

Section 3-7. Permit Fee.

The fee for a permit under this Ordinance shall be fifty dollars ($50.00).

Section 3-8. Suspension of Permit.

(a) Conviction for Violation of SECTION 5 of this Ordinance. In the event a permittee commits one (1) or more violations of SECTION 5 of this Ordinance, and a conviction results from at least one (1) of the violations, the County Administrator shall, upon the date of the conviction, suspend the permit, and notify the permittee

of the suspension. The suspension shall remain in effect for a period of ninety (90) days.

(b) Effective Date of Suspension. The period of suspension shall begin sixteen (16) days after the date the County Administrator mails the notice of suspension to the permittee or on the date the permittee delivers his permit to the County Administrator, whichever happens first.

Section 3-9. Revocation of Permit.

(a) Conviction for Violation of this Ordinance. In the event a permittee commits one (1) or more violations of SECTION 5 of this Ordinance within a period of two (2) years from the date of the violation from which the conviction resulted for which the permit was suspended under Section 3-8, but not including any time during which the permit was suspended, and a conviction results from one (1) or more of the violations, the County Administrator shall, upon the date of the first conviction, revoke the permit, and notify the permitee of the revocation.

(b) Effect of Revocation. If a permit is revoked, the permittee shall not be allowed to obtain another adult entertainment permit for a period of five (5) years.

(c) Effective Date of Revocation. The revocation shall take effect sixteen (16) days after the date the County Administrator mails the notice of revocation to the permittee or on the date the permittee delivers his license to the County Administrator, whichever happens first.

SECTION 4. PROVISIONS FOR ADULT ENTERTAINMENT ESTABLISHMENTS

Section 4-1. General Requirements.

Each adult entertainment establishment shall, regardless of whether it is licensed, observe the following general requirements:

(a) conform to all applicable building statutes, codes, ordinances, and regulations, whether federal, state or local;

(b) conform to all applicable fire statutes, codes, ordinances, and regulations, whether federal, state or local;

(c) conform to all applicable health statutes, codes, ordinances, and regulations, whether federal, state or local;

(d) conform to all applicable zoning regulations and land use laws, whether state or local;

(e) keep the adult entertainment license posted in a conspicuous place at the establishment at all times, which license shall be available for inspection upon request at all times by the public;

(f) opaquely cover each non-opaque area through which a person outside the establishment may otherwise see inside the establishment;

(g) on the first Monday of every month provide the County Administrator with a listing of all persons who are, or have been employees at the establishment since the first Monday of the previous month, and their positions.

Section 4-2. Adult Theater.

In addition to the general requirements for an adult entertainment establishment contained in Section 4-1, an adult theater shall, regardless of whether it is licensed, observe the following special requirements:

(a) If the adult theater contains a hall or auditorium area, the area shall comply with each of the following provisions:

(1) have individual, separate seats, not couches, benches, or the like, to accommodate the maximum number of persons who may occupy the area;

(2) have a continuous main aisle alongside of the seating areas in order that each person seated in the areas shall be visible from the aisle at all times; and

(3) have a sign, posted in a conspicuous place at or near each entranceway to the hall or auditorium area which lists the maximum number of persons who may occupy the hall or auditorium area, which number shall not exceed the number of seats within the hall or auditorium area.

(b) If the adult theater contains adult booths, each adult booth shall comply with each of the following provisions:

(1) have a sign posted in a conspicuous place at or near the entranceway which states the maximum number of persons who may occupy the booth, which number shall correlate with the number of seats in the booth;

(2) have a permanently open entranceway not less than two (2) feet wide and not less than six (6) feet high, not capable of being closed or partially closed by any curtain, door, or other partition which would be capable of wholly or partially obscuring any person situated in the booth;

(3) have individual, separate seats, not couches, benches, or the like, which correlate with the maximum number of persons who may occupy the booth;

(4) have a continuous main aisle alongside the booth in order that each person situated in the booth shall be visible from the aisle at all times; and

(5) have, except for the entranceway, walls or partitions of solid construction without any holes or openings in such walls or partitions.

(c) If the adult theater is designed to permit outdoor viewing by persons seated in automobiles, it shall have the motion picture screen so situated, or the perimeter of the establishment so fenced, that the material to be seen by those persons may not be seen from any public right-of-way, property zoned for residential use, religious institution, educational institution, or park.

Section 4-3. Adult Dancing Establishment.

In addition to the general requirements for an adult entertainment establishment contained in Section 4-1, an adult dancing establishment shall, regardless of whether it is licensed, observe the following special requirements:

(a) it shall have a stage provided for the display or exposure of any specified anatomical area by an

employee to a person other than another employee consisting of a permanent platform (or other similar permanent structure) raised a minimum of eighteen (18) inches above the surrounding floor and encompassing an area of at least one hundred (100) square feet; and

(b) any area in which a private performance occurs shall:

(1) have a permanently open entranceway not less than two (2) feet wide and not less than six (6) feet high, which entranceway is not capable of being closed or partially closed by any curtain, door, or other partition which would be capable of wholly or partially obscuring any person situated in the area; and

(2) have a wall-to-wall, floor-to-ceiling partition of solid construction without any holes or openings, which partition may be completely or partially transparent, and which partition separates the employee from the person viewing the display.

SECTION 5. CRIMINAL PROVISIONS

Section 5-1. Operation of Establishment Without Valid Adult Entertainment License.

It shall be unlawful for any person to be an operator of an adult entertainment establishment where the person knows or should know:

(a) that the establishment does not have an adult entertainment license for any applicable classification;

(b) that the establishment has a license which is under suspension;

(c) that the establishment has a license which has been revoked or canceled; or

(d) that the establishment has a license which has expired.

Section 5-2. Operation of Establishment Contrary to Certain Requirements.

(a) It shall be unlawful for any person to be an operator of an adult entertainment establishment which does not satisfy all of the general requirements of Section 4-1.

(b) It shall be unlawful for any person to be an operator of an adult theater which does not satisfy all of the special requirements of Section 4-2.

(c) It shall be unlawful for any person to be an operator of an adult dancing establishment which does not satisfy all of the special requirements of Section 4-3.

Section 5-3. Allowing Employee to Engage in Prohibited Acts.

It shall be unlawful for an operator of an adult entertainment establishment, regardless of whether it is licensed under this Ordinance, to knowingly or with reason to know, permit, suffer, or allow any employee:

(a) to engage in a straddle dance with a person at the establishment;

(b) to contract or otherwise agree with a person to engage in a straddle dance with a person at the establishment;

(c) to engage in any specified sexual activity at the establishment;

(d) to, where alcoholic beverages are sold, offered for sale, or consumed, display or expose at the establishment less than completely and opaquely covered human genitals or pubic region, less than completely and opaquely covered cleavage of the human buttocks, less than completely and opaquely covered areola and nipple of the human female breast, or human male genitals in a discernibly turgid state, even if completely and opaquely covered;

(e) to display or expose at the establishment less than completely and opaquely covered human genitals or pubic region, less than completely and opaquely covered cleavage of the human buttocks, less than completely and opaquely covered areola and nipple of the human female breast, or human male genitals in a discernibly turgid state, even if completely and opaquely covered, unless such employee is continuously positioned away from any person other than another employee, and unless such employee is in an area as described in Section 4.3.

(f) to display or expose any specified anatomical area while simulating any specified sexual activity with any other person at the establishment, including with another employee;

(g) to engage in a private performance unless such employee is in an area which complies with the special requirements of Section 4-3(b)(1) and (b)(2);

(h) to, while engaged in the display or exposure of any specified anatomical area, intentionally touch any

person at the adult entertainment establishment, excluding another employee;

(i) to intentionally touch the clothed or unclothed body of any person at the adult entertainment establishment, excluding another employee, at any point below the waist and above the knee of the person, or to intentionally touch the clothed or unclothed breast of any female person; or

(j) subject to Section 3-1(b), to work who has not applied for and obtained a permit under this Ordinance.

Section 5-4. Advertising Prohibited Activity.

It shall be unlawful for an operator of an adult entertainment establishment, regardless of whether it is licensed under this Ordinance, to advertise the presentation of any activity prohibited by any applicable state statute or local ordinance.

Section 5-5. Minors Prohibited.

It shall be unlawful for an operator of an adult entertainment establishment, regardless of whether it is licensed under this Ordinance, to knowingly, or with reason to know, permit, suffer, or allow:

(a) admittance to the establishment of a person under eighteen (18) years of age;

(b) a person under eighteen (18) years of age to remain at the establishment;

(c) a person under eighteen (18) years of age to purchase goods or services at the establishment; or

(d) a person to work at the establishment as an employee who is under eighteen (18) years of age.

Section 5-6. Working at Establishment Which Does Not Have Valid Adult Entertainment License.

It shall be unlawful for any person to work in an adult entertainment establishment that he knows or should know is not licensed under this Ordinance, or which has a license which is under suspension, has been revoked or canceled, or has expired, regardless of whether he has applied for and obtained a temporary or permanent permit under this Ordinance.

Section 5-7. Working Without Permit Prohibited.

(a) Subject to Section 3-1(b), it shall be unlawful for any person to work in an adult entertainment establishment, regardless of whether it is licensed under this Ordinance, if the person has not applied for and obtained a temporary or permanent permit under this Ordinance.

(b) Subject to Section 3-1(b), it shall be unlawful for any person to work in an adult entertainment establishment, regardless of whether it is licensed under this Ordinance, unless the person has a temporary or permanent permit in his possession while working at the establishment.

(c) Subject to Section 3-1(b), it shall be unlawful for any person working in an adult entertainment establishment, regardless of whether it is licensed under this Ordinance, to fail to produce a temporary or permanent permit upon demand for inspection by any law enforcement officer.

Section 5-8. Engaging in Prohibited Activity.

It shall be unlawful for any employee of an adult entertainment establishment, regardless of whether it is licensed under this Ordinance:

(a) to engage in a straddle dance with a person at the establishment;

(b) to contract or otherwise agree with a person to engage in a straddle dance with a person at the establishment;

(c) to engage in any specified sexual activity at the establishment;

(d) to, where the employee knows or should know that alcoholic beverages are sold, offered for sale, or consumed, display or expose at the establishment less than completely and opaquely covered human genitals or pubic region, less than completely and opaquely covered cleavage of the human buttocks, less than completely and opaquely covered areola and nipple of the human female breast, or human male genitals in a discernibly turgid state, even if completely and opaquely covered;

(e) to display or expose at the establishment less than completely and opaquely covered human genitals or pubic region, less than completely and opaquely covered cleavage of the human buttocks, less than completely and opaquely covered areola and nipple of the human female breast, or human male genitals in a discernibly turgid state, even if completely and opaquely covered, unless such employee is continuously positioned away from any person other than another employee, and unless such employee is in an area as described in Section 4-3(a);

(f) to engage in the display or exposure of any specified anatomical area while simulating any specified sexual activity with any other person at the establishment, including with another employee;

(g) to engage in a private performance unless such employee is in an area which complies with the special requirements set forth at 4-3(b)(1) and (b)(2);

(h) to, while engaged in the display or exposure of any specified anatomical area, intentionally touch any person at the adult entertainment establishment, excluding another employee; or

(i) to touch the clothed or unclothed body of any person at the adult entertainment establishment, excluding another employee, at any point below the waist and above the knee of the person, or to touch the clothed or unclothed breast of any female person.

Section 5-9. Touching of Employee by Person.

(a) It shall be unlawful for any person in an adult entertainment establishment, other than another employee, to intentionally touch an employee who is displaying or exposing any specified anatomical area at the adult entertainment establishment.

(b) It shall be unlawful for any person in an adult entertainment establishment, other than another employee, to intentionally touch the clothed or unclothed breast of any employee, or to touch the clothed body of any employee at any point below the waist and above the knee of the employee.

Section 5-10. Exceeding Occupancy Limit of Adult Booth.

It shall be unlawful for any person to occupy an adult booth in which booth there are more people than that specified on the posted sign required by Section 4-2.

Section 5-11. Use of Restrooms or Dressing Rooms.

Notwithstanding any provision indicating to the contrary, it shall not be unlawful for any employee of an adult entertainment establishment, regardless of whether it is licensed under this Ordinance, to expose any specified anatomical area during the employee's bona fide use of a restroom, or during the employee's bona fide use of a dressing room which is accessible only to employees.

Section 5-12. Hours of Operation.

(a) It shall be unlawful for any operator of an adult entertainment establishment to allow such establishment to remain open for business, or to permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 2:00 a.m. and 9:00 a.m. of any particular day.

(b) It shall be unlawful for any employee of an adult entertainment establishment to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 2:00 a.m. and 9:00 a.m. of any particular day.

Section 5-13. Alteration of License or Permit.

(a) It shall be unlawful for any person to alter or otherwise change the contents of an adult entertainment

license without the written permission of the County Administrator.

(b) It shall be unlawful for any person to alter or otherwise change the contents of an adult entertainment permit without the written permission of the County Administrator.

Section 5-14. False Statement or False Information in Applying for License or Permit.

(a) It shall be unlawful for any person applying for an adult entertainment license to make a false statement which is intended to facilitate the issuance of a license, or to provide false information which is intended to facilitate the issuance of a license.

(b) It shall be unlawful for any person applying for an adult entertainment permit to make a false statement which is intended to facilitate the issuance of a permit, or to provide false information which is intended to facilitate the issuance of a permit.

Section 5-15. Violations Subject to Criminal Prosecution.

Whoever violates any Section of SECTION 5 of this Ordinance may be prosecuted and punished as provided by Section 125.69, Florida Statutes (1985).

SECTION 6. MISCELLANEOUS PROVISIONS

Section 6-1. Appeals.

(1) Within fifteen (15) days of the mailing of a notice of denial of an application for a license or permit or a notice of suspension or revocation of a license or permit,

the aggrieved party may file a notice of appeal with the Board.

(2) The notice of appeal shall be filed with the Clerk of the Board. The notice of appeal shall be accompanied by payment of a filing fee of fifty dollars ($50.00) to cover administrative costs. Upon receipt of the notice of appeal and upon payment of the accompanying fifty dollars ($50.00) filing fee, the Clerk shall schedule a hearing for as soon as the Board's calendar will allow. The Clerk shall provide the appellant with at least ten (10) days' notice of the time and place for the hearing.

(3) If, at the conclusion of the hearing, the Board finds that the license or permit should not have been denied, suspended, revoked, or canceled, it shall so notify the County Administrator, who shall immediately grant or reissue the license or permit.

Section 6-2. Notice.

Any notice required under this Ordinance shall be accomplished by sending a written notification by certified mail to the mailing address set forth on the application for the license or a permit. This mailing address shall be considered the correct mailing address unless the County Administrator has been otherwise notified in writing.

Section 6-3. Immunity from Prosecution.

The County or any Department shall be immune from prosecution, civil or criminal, for reasonable, good-faith trespass upon an adult entertainment establishment while acting within the scope of its authority under this Ordinance.

Section 6-4. Powers of Board.

The Board may bring suit in the Circuit Court to restrain, enjoin or otherwise prevent the violation of this Ordinance.

Section 6-5. Emergency Adoption and Effective Date

The Board finds that it is necessary, in order to protect the health, safety and welfare of the citizens of Citrus County, that this Ordinance become effective immediately upon its adoption. The effective date of this Ordinance shall be when a certified copy of the Ordinance has been accepted by the postal authorities of the U.S. Government for special delivery by registered mail to the Department of State.

DONE AND ADOPTED this 25th day of March, 1988.

BOARD OF COUNTY
COMMISSIONERS OF CITRUS
COUNTY, FLORIDA

ATTEST:

/s/ Walt Connors
WALT CONNORS, CLERK

BY: /s/ Nick Bryant
Nick Bryant, Chairman

APPROVED AS TO FORM
AND CORRECTNESS:

/s/ James A. Neal, Jr.
JAMES A. NEAL, JR.
ASSISTANT COUNTY ATTORNEY

APPENDIX E

ORDINANCE NO. 88 - 06

AN ORDINANCE OF CITRUS COUNTY, FLORIDA, TO BE KNOWN AS THE "ADULT ENTERTAINMENT ORDINANCE"; PROVIDING GENERAL PROVISIONS, FINDINGS OF FACT AND DEFINITIONS; PROVIDING PROVISIONS CONCERNING LICENSING ENTERTAINMENT ESTABLISHMENTS; PROVIDING PROVISIONS CONCERNING PERMITTING OF EMPLOYEES OF ADULT ENTERTAINMENT ESTABLISHMENTS; PROVIDING PROVISIONS CONCERNING REQUIREMENTS FOR ADULT ENTERTAINMENT ESTABLISHMENTS; PROVIDING CRIMINAL PROVISIONS; PROVIDING PROVISIONS REGARDING SUSPENSION AND REVOCATION OF LICENSE; PROVIDING PROVISIONS REGARDING SUSPENSION AND REVOCATION OF PERMIT; PROHIBITING ESTABLISHMENTS FROM OPERATING BETWEEN HOURS OF 2:00 A.M. AND 9:00 A.M.; PROHIBITING HOLES IN WALLS OF ADULT BOOTHS; PROHIBITING THE ALTERATION OF A LICENSE OR PERMIT; PROHIBITING FALSE STATEMENT OR FALSE INFORMATION IN APPLYING FOR A LICENSE OR PERMIT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CITRUS COUNTY, FLORIDA:

SECTION 1. GENERAL PROVISIONS

Section 1-1. Title. This Ordinance shall be known and may be cited as the "Citrus County Adult Entertainment Ordinance".

Section 1-2. Authority. The Adult Entertainment Ordinance is enacted under the Home Rule Power of Citrus County, Florida, in the interest of the health, peace, safety, morals, and general welfare of the people of Citrus County, and under the authority of Citrus County to regulate the sale and consumption of alcoholic beverages under the Twenty-First Amendment to the Constitution of the United States.

Section 1-3. Scope. The Adult Entertainment Ordinance shall be effective throughout Citrus County, Florida, except that no provision of this Ordinance that conflicts with a provision of an Ordinance of any municipality within Citrus County, Florida, shall be effective within such municipality.

Section 1-4. Construction. The Adult Entertainment Ordinance shall be liberally construed to accomplish its purpose of licensing, regulating and dispersing adult entertainment and related activities. Unless otherwise indicated, all provisions of this Ordinance shall apply equally to all persons, regardless of sex. Masculine pronouns, such as "he", "his", and "him", as employed in this Ordinance, shall also be construed to apply to feminine pronouns and neutral pronouns, unless the context suggests otherwise. Words used in the singular number shall include the plural number, unless the context suggests otherwise.

Section 1-5. Purpose. The intent of the Board of County Commissioners of Citrus County, Florida, in adopting the Adult Entertainment Ordinance is to establish reasonable and uniform regulations that will protect

the health, safety, morals and general welfare of the people of Citrus County, Florida.

Section 1-6. Findings of Fact. Based on evidence and testimony concerning the adverse secondary effects of adult uses on the community presented at public hearings before the Board of County Commissioners of Citrus County, Florida, and on the findings incorporated in the *City of Renton v. Playtime Theaters, Inc.*, 106 S.Ct. 925 (1986); *Coleman A. Young v. American Mini Theaters, Inc.*, 427 U.S. 50, 49 L.Ed.2d 310, 96 S.Ct. 2440, reh. den. (U.S.) 50 L.Ed.2d 155, 97 S.Ct. 191; Summary and presentation of reports, studies and judicial opinions concerning the adverse secondary effects of adult uses on the community; *Northend Cinema, Inc. v. Seattle*, 90 Wash. 2d 709, 585 P.2d 1153 (1978); *A Report on Zoning and Other Methods of Regulating Adult Entertainment in Amarillo*, Texas dated September 12, 1977; *Regulation of Criminal Activity and Adult Businesses*, City of Phoenix, May, 1979; Findings of the City Planning Commission for the City of New York dated January 26, 1977; *Detroit's Approach to Regulating the "Adult" Uses* Presented to American Institute of Planners Annual Conference, October 10, 1977; *Adult Entertainment Businesses in Indianapolis*, An Analysis, 1987; and a presentation of the Citrus County Sheriff officers detailing the potential criminal activities associated with adult uses in Citrus County:

(a) Establishments exist or may exist within Citrus County, Florida, where books, magazines, motion pictures, prints, photographs, periodicals, records, novelties and/or devices which depict, illustrate, describe or relate to specified sexual activities are possessed, displayed, exhibited, distributed and/or sold.

(b) Establishments exist or may exist within Citrus County, Florida:

(1) where the superficial tissues of one person are manipulated, rubbed, stroked, kneaded, and/or tapped by a second person, accompanied by the display or exposure of specified anatomical areas;

(2) where dancers, entertainers, performers, or other individuals, who, for any form of commercial gain, perform or are presented while displaying or exposing any specified anatomical area; or

(3) where straddle dancing occurs.

(c) The activities described in subsections (a) and (b) occur at establishments for the purpose of making a profit, and, as such, are subject to regulation by Citrus County, Florida, in the interest of the health, safety, morals and general welfare of the people of Citrus County.

(d) When the activities described in subsections (a) and (b) are present in establishments within Citrus County, Florida, other activities which are illegal, immoral, or unhealthful tend to accompany them, concentrate around them, and be aggravated by them. Such other activities include, but are not limited to, prostitution, pandering, solicitation for prostitution, lewd and lascivious behavior, exposing minors to harmful materials, possession, distribution and transportation of obscene materials, sale and possession of controlled substances, and violent crimes against persons and property.

(e) When the activities described in subsections (a) and (b) are present in establishments within Citrus

County, Florida, they tend to attract an undesirable number of transients, blight neighborhoods, adversely affect neighboring businesses, lower property values, promote crime, particularly the kinds detailed in subsection (d) and ultimately lead residents and businesses to move to other locations.

(f) The establishments in which the activities described in subsections (a) and (b) occur are usually constructed, in part or in whole, of substandard materials, and are usually maintained in a manner reflecting disregard for the health and safety of the occupants.

(g) The activities described in subsections (a) and (b) frequently occur in establishments concurrent with the sale and consumption of alcoholic beverages.

(h) The concurrence of the sale and consumption of alcoholic beverages with the activities described in subsections (a) and (b) leads to an increase in criminal activity, moral degradation, and disturbances of the peace and order of Citrus County, Florida.

(i) The concurrence of the sale and consumption of alcoholic beverages with the activities described in subsections (a) and (b) is hazardous to the health and safety of those persons in attendance, depreciates the value of adjoining property, harms the economic welfare of Citrus County, Florida, and adversely affects the public's interest in the quality of life, tone of commerce, and community environment in Citrus County.

(j) In order to preserve and safeguard the health, safety, morals and general welfare of the people of Citrus County, Florida, it is necessary and advisable for Citrus

County, Florida, to regulate the sale and consumption of alcoholic beverages at establishments where the activities described in subsections (a) and (b) occur.

(k) Employees of establishments at which the activities described in subsections (a) and (b) occur engage in a higher incidence of certain types of criminal behavior than employees of other establishments.

(l) Physical contact within establishments at which the activities described in subsections (a) and (b) occur between employees exhibiting specified anatomical areas and customers poses a threat to the health of both and promotes the spread of communicable and social diseases.

(m) In order to preserve and safeguard the health, safety, morals, and general welfare of the people of Citrus County, Florida, it is necessary and advisable for Citrus County, Florida, to regulate the conduct of owners, managers, operators, agents, employees, entertainers, performers, and customers at establishments where the activities described in subsections (a) and (b) occur.

(n) The potential dangers to the health, safety, morals, and general welfare of the people of Citrus County, Florida, posed by permitting an establishment at which the activities described in subsections (a) and (b) occur to operate without first obtaining a license under this Ordinance are so great as to require the licensure of such establishments prior to their being permitted to operate.

(o) Requiring employees of establishments at which the activities described in subsections (a) and (b) occur to

obtain an adult entertainment permit before beginning to work in such establishments will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects, by preventing minors from working in such establishments, and by making it easier for health officials to control the spread of communicable and social diseases in such establishments.

(p) Prohibiting establishments at which the activities described in subsections (a) and (b) occur from operating within close proximity of education institutions, religious institutions, areas zoned for residential use, and parks, at which children are customarily found, will serve to protect children from the adverse affects of the activities that accompany such establishments.

(q) Personal advertising within close proximity of public thoroughfares poses a traffic hazard and a threat to the safety of people using those thoroughfares.

(r) "Straddle dancing" does not contain any element of communication, and is therefore conduct rather than expression.

(s) "Straddle dancing" in establishments poses a threat to the health of the participants and promotes the spread of communicable and social disease.

Section 1-7. Definitions. In the Adult Entertainment Ordinance, unless the context suggests otherwise:

(a) "Adult Bookstore" means an establishment which sells or rents adult material, unless the adult material is accessible only by employees and either the gross income from the sale or rental of adult material comprises

less than ten percent (10%) of the gross income from the sale or rental of goods or services at the establishment or the individual items of adult material offered for sale or rental comprises less than twenty-five percent (25%) of the individual items publicly displayed at the establishment as stock in trade. It is an affirmative defense to an alleged violation of this Ordinance regarding operating an adult bookstore without an adult entertainment license if the alleged violator shows that the adult material is accessible only by employees and either the gross income from the sale or rental of adult material comprises less than ten percent (10%) of the gross income from the sale or rental of goods or services at the establishment, or the individual items of adult material offered for sale or rental comprise less than twenty-five percent (25%) of the individual items publicly displayed at the establishment as stock in trade.

(b) "Adult Booth" means a small enclosure inside an adult entertainment establishment accessible to any person, regardless of whether a fee is charged for access. The term "adult booth" includes, but is not limited to, a "peep show" booth, or other booth used to view "adult material". The term "adult booth" does not include a foyer through which any person can enter or exit the establishment, or a restroom.

(c) "Adult Dancing Establishment" means an establishment where employees display or expose specified anatomical areas to others, regardless of whether the employees actually engage in dancing.

(d) "Adult Entertainment Establishment" means an adult theater, an adult bookstore, or an adult dancing

establishment operated for commercial or pecuniary gain. ("Operated for commercial or pecuniary gain" shall not depend upon actual profit or loss. Also, "operated for commercial or pecuniary gain" shall be presumed where the establishment has an occupational license.) An establishment with an adult entertainment license is presumed to be an adult entertainment establishment.

(e) "Adult Material" means any one or more of the following, regardless of whether it is new or used:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations, or recordings, or other audio matter, which have as their primary or dominant theme matter depicting, illustrating, describing or relating to specified sexual activities or specified anatomical areas; or

(2) Instruments, novelties, devices or paraphernalia which are designed for use in connection with specified sexual activities.

(f) "Adult Motel" means any motel, hotel, boarding house, rooming house or other place of temporary lodging which includes the word "adult" in any name it uses or otherwise advertises the presentation of films, motion pictures, video cassettes, slides or other photographic reproductions, which have as their primary or dominant theme matters depicting, illustrating or relating to specified sexual activities or specified anatomical areas. The term "adult motel" is included within the definition of "adult theater".

(g) "Adult Theater" means an establishment which, except as set forth in the final sentence of this paragraph, consists of an enclosed building, or a portion or part of an enclosed building, or an open-air area used for viewing by persons of films, motion pictures, video cassettes, slides, or other photographic reproductions which have as their primary or dominant theme matters depicting, illustrating or relating to specified sexual activities or specified anatomical areas. "Adult motels" are included within the definition of "adult theater". An establishment which has "adult booths" is considered to be an "adult theater".

(h) "Alcoholic Beverage" means a beverage containing more than one percent (1%) of alcohol by weight.

(1) It shall be prima-facie evidence that a beverage is an alcoholic beverage if there is proof that the beverage in questions was or is known as whiskey, moonshine whiskey, shine, rum, gin, tequila, vodka, scotch, scotch whiskey, brandy, beer, malt liquor, or by any other similar name or names, or was contained in a bottle or can labeled as any of the above names, or a name similar thereto, and the bottle or can bears the manufacturer's insignia, name, or trademark.

(2) Any person who, by experience in the handling of alcoholic beverages, or who by taste, smell, or drinking of such alcoholic beverages has knowledge of the alcoholic nature thereof, may testify as to his opinion about whether such beverage is an alcoholic beverage.

(i) "Board" means the Board of County Commissioners of Citrus County, Florida.

(j) "County Administrator" means the chief administrative officer or his designee.

(k) "Conviction" means a determination of guilt resulting from plea or trial, regardless of whether adjudication was withheld or whether imposition of sentence was suspended.

(l) "Department" means the Building Department, Fire Prevention Division, Health Department, Sheriff, Zoning and Permits Division, or the Department of Development Services, including the respective director, employees, and agents thereof.

(m) "Educational Institution" means a premises or site upon which there is an institution of learning for minors, whether public or private, which conducts regular classes and/or courses of study required for eligibility to certification by, accreditation to, or membership in the State Department of Education of Florida, Southern Association of Colleges and Secondary Schools, or the Florida Council of Independent Schools. The term "educational institution" includes a premises or site upon which there is a nursery school, kindergarten, elementary school, junior high school, senior high school, or any special institution of learning. However, the term "educational institution" does not include a premises or site upon which there is a vocational institution, professional institution or an institution of higher education, including a community college, junior college, four year college or university.

(n) "Employee" means a person who works or performs in an adult entertainment establishment, irrespective of whether said person is paid a salary or wage by the owner or manager of the premises.

(o) "Establishment" means a site or premises, or portion thereof, upon which certain activities or operations are being conducted for commercial or pecuniary gain. ("Operated for commercial or pecuniary gain" shall not depend upon actual profit or loss. Also, "operated for commercial or pecuniary gain" shall be presumed where the establishment has an occupational license.)

(p) "Inspector" means a respective employee of the Health Department, Building Department, Zoning and Permits Division, Sheriff, or Fire Prevention Division who inspects premises licensed under this Ordinance and takes or requires the actions authorized by this Ordinance in case of violations being found on licensed premises, and who also inspects premises seeking to be licensed under this Ordinance and takes or requires corrections of unsatisfactory conditions found on the premises.

(q) "Licensee" means any person whose application for an adult entertainment establishment has been granted and who owns, operates or controls the establishment.

(r) "Operator" means any person who engages in or performs any activity which is necessary to or which facilitates the operation of an adult entertainment establishment, including but not limited to the licensee, manager, owner, doorman, bartender, disc jockey, sales clerk, ticket taker, movie projectionist, or supervisor.

(s) "Park" means a tract of land within a municipality or unincorporated area which is kept for ornament and/or recreation and which is maintained as public property.

(t) "Permittee" means a person who has obtained an adult entertainment permit pursuant to SECTION 3 of this Ordinance.

(u) "Person" includes, but is not limited to, an individual, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other or any other similar entity.

(v) "Private performance" means the display or exposure of any specified anatomical area by an employee at an adult entertainment establishment to a person other than another employee while the person is in an area not accessible during such display to all other persons in the establishment, or which the person is in an area in which the person is totally or partially screened or partitioned during such display from the view of all persons outside the area.

(w) "Religious institution" means a premises or site which is used primarily or exclusively for religious worship and related activities.

(x) "Specified anatomical areas" means:

(1) less than completely and opaquely covered:

(A) human genitals or pubic region; or

(B) cleavage of the human buttocks; or

(C) that portion of the human female breast encompassed within an area falling below the horizontal line one would have to draw to intersect a point immediately above the top of the areola (the colored ring around the nipple). This definition shall include the entire lower portion of the human female breast, but shall

not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areola is not so exposed.

(2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(y) "Specified criminal act" means:

(1) A criminal violation of this Ordinance;

(2) Any felony;

(3) An offense under Chapter 794, Florida Statutes (Sexual Battery);

(4) An offense under Chapter 796, Florida Statutes (Prostitution);

(5) An offense under Chapter 800, Florida Statutes (Lewdness; Indecent Exposure);

(6) An offense under Chapter 826, Florida Statutes (Bigamy; Incest);

(7) An offense under Chapter 847, Florida Statutes (Obscene Literature; Profanity); or

(8) An offense under an analogous statute of a state other than Florida, or under an analogous ordinance of another county or city.

(z) "Specified sexual activities" means;

(1) human genitals in a state of sexual stimulation, arousal or tumescence; or

(2) acts of human analingus, beastiality, buggery, cunnilingus, coprophagy, coprophilia, fellation, flagellation, masochism, masturbation, necrophilia, pederasty, pedophilia, sadism, sadomasochism, sapphism, sexual intercourse, sodomy, urolagnia or zooerasty; or

(3) fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast; or

(4) excretory functions as part of or in connection with any of the activities set forth in subsections (1) through (3).

(aa) "Straddle dance" also known as a "lap dance" or "face dance", means the use by an employee, of any part of his or her body to touch the genital or pubic area of a person while at the establishment, or the touching of the genital or pubic area of any employee with a person while at the establishment. It shall be a "straddle dance" regardless of whether the "touch" or "touching" occurs while the employee is displaying or exposing any specified anatomical area. It shall also be a "straddle dance" regardless of whether the "touch" or "touching" is direct or through a medium.

Section 1-8. Regulation of Obscenity Subject to State Law. It is not the intent of the Board to legislate with respect to matters of obscenity. These matters are regulated by state law.

Section 1-9. Regulation of Massage Establishments Subject to State Law. It is not the intent of the Board to legislate with respect to matters of massage establishments. These matters are regulated by state agency, the

Department of Professional Regulation, Board of Massage, and by state law, Chapter 480, Florida Statutes.

Section 1-9. [sic] Severability. If any portion of this Ordinance, or any application thereof is declared to be void, unconstitutional or invalid for any reason, such portion or provision, or this application thereof, shall be severable from this Ordinance. The remaining portions and provisions of this Ordinance, and all applications thereof shall remain in full force and effect. No void, unconstitutional or invalid portion or proscribed provision, or application thereof, was an inducement to the enactment of this Ordinance.

SECTION 2. LICENSING PROVISIONS

Section 2-1. Responsibilities of Board, County Administrator and Departments. Ultimate responsibility for the administration of this Ordinance is vested in the Board. The County Administrator or his designee is responsible for granting, denying, revoking, renewing, suspending, and cancelling adult entertainment licenses for proposed or existing adult entertainment establishments. The Sheriff is responsible for verifying information contained on an application pursuant to Section 2-3(b)(1)-(5) of this Ordinance, for inspecting any proposed, licensed or non-licensed establishment in order to ascertain whether it is in compliance with applicable criminal statutes and ordinances, and for enforcing applicable criminal statutes and ordinances, including those set forth at SECTION 5 of this Ordinance. In addition, the Sheriff is responsible for reviewing permit applications, as provided in SECTION 3. The Building Department is

responsible for inspecting any proposed establishment for which a license is being applied for or any licensed establishment in order to ascertain whether it complies with or is complying with this Ordinance and all applicable building codes, statutes, ordinances, and regulations in effect in Citrus County, Florida. The Division of Fire Prevention is responsible for inspecting any proposed establishment for which a license is being applied for or any licensed establishment in order to ascertain whether it complies with or is complying with SECTION 4 of this Ordinance and all applicable fire codes, statutes, ordinances and regulations in Citrus County. The Health Department is responsible for any proposed establishment for which a license is being applied for or any licensed establishment in order to ascertain whether it complies with or is complying with SECTION 4 of this Ordinance and all applicable health codes, statutes, ordinances, and regulations in effect in Citrus County. In addition, the Health Department is responsible for reviewing permit applications, as provided in SECTION 3. The Zoning and Permits Division of the Department of Development Services is responsible for ascertaining whether a proposed establishment for which a license is being applied for complies with all locational requirements of this Ordinance, applicable portions of this Ordinance, all applicable zoning regulations in effect in Citrus County, and whether a licensed establishment is complying with SECTION 5 of this Ordinance and all applicable zoning regulations and land use laws in effect in Citrus County. The County Administrator is responsible for granting, denying, renewing, canceling, suspending, and

revoking permits for proposed or current permittees in accordance with SECTION 3 of this Ordinance.

Section 2-2. Adult Entertainment License Required: Classifications of.

(a) Requirement. No adult entertainment establishment shall be permitted to operate without having been first granted an adult entertainment license by the County Administrator under this Ordinance.

(b) Classifications. Adult entertainment establishment licenses referred to in this Ordinance shall be classified as follows:

(1) adult bookstore;

(2) adult theater; and

(3) adult dancing establishment.

(c) Single Classification of License. Any adult entertainment license for a particular adult entertainment establishment shall be limited to one classification of license.

Section 2-3. Application Required for Adult Entertainment License; Contents of; Application Fee; Rejection of Incomplete Application; Consent by Applicant.

(a) Required. Any person desiring to operate an adult entertainment establishment shall file with the County Administrator a sworn license application on a standard application form supplied by the County Administrator.

(b) Contents of Application. The completed application shall contain the following information and shall be accompanied by the following documents:

(1) if the applicant is:

(A) an individual, the individual shall state his legal name and any aliases and submit satisfactory proof that he is eighteen (18) years of age; or

(B) a partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and, if in existence, a copy of the partnership agreement; or

(C) a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing, the names and capacity of all officers, directors and principal stockholders, and, if applicable, the name of the registered corporate agent and the address of the registered office for service of process;

(2) if the applicant intends to conduct the establishment under a name other than that of the applicant, the establishment's fictitious name and the county of registration under SECTION 865.09, Florida Statutes (1987);

(3) whether the applicant or any of the other individuals listed pursuant to subparagraph (1) has, within the ten (10) year period immediately preceding the date of the application, been convicted of a specific criminal act, and, if so, the specified criminal act involved, the date of conviction and the place of conviction;

(4) whether the applicant or any of the other individuals listed pursuant to subparagraph (1) has had a previous license under this Ordinance suspended or revoked, including the name and location of the establishment for which the license was suspended or revoked, as well as the date of the suspension or revocation, and whether the applicant or any other individuals listed pursuant to subparagraph (1) has been a partner in a partnership or an officer, director or principal stockholder of a corporation whose license under this Ordinance has previously been suspended or revoked, including the name and location of the establishment for which the license was suspended or revoked, as well as the date of the suspension or revocation;

(5) whether the applicant or any other individuals listed pursuant to subparagraph (1) holds any other licenses under this Ordinance and, if so, the names and locations of such other licensed establishments;

(6) the single classification of license for which the applicant is filing;

(7) the location of the proposed establishment, including a legal description of the property site, and a legal street address;

(8) the names of the employees for the proposed establishment, if known, or, if presently unknown a statement to that effect;

(9) the applicant's mailing address; and

(10) a site plan drawn to appropriate scale of the proposed establishment, including, but not limited to; (A) all property lines, right-of-way, and the location of

the buildings, parking areas and spaces, curb cuts, and driveways; (B) all windows, doors, entrances and exits, fixed structural features, walls, stages, partitions, projection booths, admission booths, adult booths, concession booths, stands, counters and similar structures; (C) all proposed improvements or enlargements to be made, which shall be indicated and calculated in terms of percentage of increase in floor size.

(c) Application Fee. Each application shall be accompanied by a non-refundable fee of Two Hundred Dollars ($200.00). If the application for a license is approved and a license is granted, the fee shall be applied as a credit towards the annual license fee required for the first year pursuant to Section 2-7 of this Ordinance.

(d) Rejection of Incomplete Application. In the event the County Administrator determines or learns at any time that the applicant has not properly completed the application for a proposed establishment, he shall promptly notify the applicant of such fact and shall automatically reject the application.

(e) Consent. By applying for a license under this Ordinance, the applicant shall be deemed to have consented to the provisions of this Ordinance and to the exercise by the County Administrator and the Departments of their respective responsibilities under this Ordinance.

Section 2-4. Investigation of Application.

(a) Upon receipt of the application properly filed with the County Administrator and upon payment of the

non-refundable application fee, the County Administrator shall immediately stamp the application as received and shall immediately thereafter send photocopies of the application to the Sheriff, the Department of Development Services, Fire Prevention, and the Health Department. Each department shall promptly conduct an investigation of the applicant, application and the proposed establishment in accordance with its responsibilities summarized in Section 2-1 of this Ordinance. At the conclusion of its investigation, each department shall indicate on the photocopy of the application its approval or disapproval of the application, date it, sign it, and, in the event it disapproves, it shall so state its reasons.

(b) A Department shall disapprove of an application if it finds that the proposed establishment will be in violation of any provision of this Ordinance or of any building, fire, health, or zoning statute, code, ordinance, or regulation. After its indication of approval or disapproval, each department shall immediately return the photocopy of the application to the County Administrator.

Section 2-5. Grant; Denial.

(a) Time Period for Granting or Denying License.

(1) The County Administrator shall grant or deny an application for an adult dancing establishment within forty-five (45) days from the date of its proper filing. Upon the expiration of the forty-five (45) day period the applicant may be permitted to begin operating the establishment for which a license is sought, unless and until the County Administrator notifies the applicant

of a denial of the application and states the reason(s) for the denial.

(2) The County Administrator shall grant or deny an application for an adult bookstore or adult theater within fourteen (14) days from the date of proper filing. Upon the expiration of the fourteenth (14th) day, the applicant may be permitted to begin operating the establishment for which a license is sought, unless and until the County Administrator notifies the applicant of a denial of the application and states the reason(s) for that denial.

(b) Granting of Application for License. If each of the departments has approved of the application, the County Administrator shall grant the application, notify the applicant of the granting, and issue the license to the applicant upon payment of the appropriate annual license fee as provided in Section 2-6 and 2-7, with credit as provided in Section 2-3(c).

(c) Denying of Application for License.

(1) The County Administrator shall deny the application for any of the following reasons:

(A) any of the Departments, excluding the Sheriff, has disapproved of the application;

(B) the application contains material false information;

(C) the applicant or any of the other individuals listed pursuant to Section 2-3(b)(1) has a license under this Ordinance which has been suspended or revoked;

(D) the granting of the application would violate a statute or ordinance or an order from a court of law which effectively prohibits the applicant from obtaining an adult entertainment establishment license.

(E) any person or legal entity who is required by this Ordinance to possess a license for engaging in any business enterprise, profession or other activity included and regulated within this Ordinance who as a licensee, or as an agent or employee of such licensee is convicted of a crime involving moral turpitude committed within the course of said business activity, or is, or has been convicted of a felony or a first degree misdemeanor directly related to the specific licensed business activity, upon due and proper record of such conviction presented to the County Administrator, shall be subject to denial of a license application. The applicant shall have the right to request a public hearing before the Board of County Commissioners and present evidence and testimony why such license application should not be denied. Nothing herein shall be construed to prevent the Board of County Commissioners, upon a showing of good cause, from issuing a license to any person or entity whose license application has been previously denied. Such issuance, upon approval by the Board of County Commissioners of Citrus County, shall be pursuant to the procedures heretofore established in this Ordinance.

(2) If the County Administrator denies the application, he shall notify the applicant of the denial, and state the reason(s) for the denial.

(3) If a person applies for a license at a particular location within a period of nine (9) months from the

date of denial of a previous application for a license at the location, and there has not been an intervening change in the circumstances which will probably lead to a different decision regarding the former reason(s) for denial, the application shall be rejected.

Section 2-6. Contents of License; Terms of License; Renewals; Expiration; Cancellation.

(a) Contents. An adult entertainment license shall state on its face the name of the licensee, the name of the establishment, the street address of the establishment, the classification(s) of the license, the date of issuance, and the date of expiration.

(b) Terms. All licenses issued under this Ordinance shall be annual licenses which shall commence running on October 1, on which date they shall have been paid for, and shall expire on September 30 of the following year. If a license is issued after October 1, but by March 31 of the following year, the applicant shall pay the appropriate license fee. If a license is issued after March 31, but by October 1 of the same year, the applicant shall pay one-half the appropriate license fee.

(c) Renewals. Licenses shall be renewed annually. Subject to other provisions of this Ordinance, a licensee under this Ordinance shall be entitled to a renewal of his annual license from year to year, as a matter of course, by October 1 by presenting the license for the previous year and by paying the appropriate license fee.

(d) Expiration. A license that is not renewed under this Ordinance by October 1 of each year shall expire. An expired license may be renewed by November 30 of the

same year upon presentation of an affidavit stating that no adult entertainment activity has taken place at the establishment subsequent to expiration, upon payment of the appropriate license fee, and upon payment of a penalty of ten percent (10%) of the appropriate license fee for the month of October, or fraction thereof, and an additional penalty of five percent (5%) of the appropriate license fee for the month of November, or fraction thereof.

(e) Cancellation. All expired licenses not renewed by November 30 shall be canceled summarily by the County Administrator.

Section 2-7. Annual License Fees; Levy of; Regulatory in Nature.

(a) Levy of License Fees. There are hereby levied the following annual license fees under this Ordinance for an adult entertainment establishment;

(1) an establishment having a license for only an adult bookstore – seven hundred fifty dollars ($750.00);

(2) an establishment having a license for only an adult theater, as follows:

(A) having only adult booths thirty-five dollars ($35.00) for each booth; or

(B) having only a hall or auditorium three dollars and fifty cents ($3.50) for each seat; or

(C) having only an area outdoors designed to permit viewing by customers seated in vehicles – three dollars and fifty cents ($3.50) for each parking space; or

(D) having a combination of (A), (B), and/or (C) – the cumulative license fee applicable to each under (A), (B) and (C);

(E) adult motel – seven hundred fifty dollars ($750.00);

(3) an establishment having a license for only an adult dancing establishment – seven hundred fifty dollars ($750.00);

(4) an establishment having a license for two classifications – eight hundred dollars ($800.00);

(5) an establishment having a license for three classifications – nine hundred dollars ($900.00).

(b) License Fees are Regulatory in Nature. The annual license fees collected under this Ordinance are declared to be regulatory fees which are collected for the purpose of examination and inspection of adult entertainment establishments under this Ordinance and the administration thereof. The regulatory fees are in addition to and not in lieu of the occupational license taxes imposed by other Ordinances of Citrus County, Florida.

Section 2-8. Records and Reports; Consent by Licensee.

(a) Records and Reports. Each licensee shall keep such records and make such reports as may be required by the County Administrator and the Departments to implement this Ordinance and to carry out its purpose.

(b) Consent. By holding a license under this Ordinance, the licensee shall be deemed to have consented to the provisions of this Ordinance and to the exercise by

the County Administrator and the Departments of their respective responsibilities under this Ordinance.

Section 2-9. Transfer of License.

(a) Requirements for Transfer. A licensee shall not transfer his license to another person, and thereby surrender possession, control, and operation of the licensed establishment to such other person, unless and until such other person satisfies the following requirements:

(1) obtains an amendment to the license from the Ordinance which provides that he is now the licensee, which amendment may be obtained only if he has completed and properly filed an application with the County Administrator setting forth the information called for under Section 2-3(b)(1)-(5), and (9), and the application has been granted by the County Administrator after approval by the Sheriff's Department; and

(2) in the event he has purchased the licensed establishment from the licensee, adduces satisfactory proof that the sale was bona fide; and

(3) pays a transfer fee of ten percent (10%) of the appropriate annual license fee.

(b) Effect of Suspension or Revocation Procedures. No license may be transferred pursuant to subsection (a) when the County Administrator has notified the licensee that suspension of revocation proceedings have been or will be brought against the licensee.

(c) No Transfer to Different Location. A licensee shall not transfer his license to another location.

(d) Attempted Improper Transfer Void; License Abandoned. Any attempted transfer of a license either directly or indirectly in violation of this Section is hereby declared void, and the license shall be deemed abandoned and shall revert to the County Administrator.

Section 2-10. Changing Name of Establishment. No licensee may change the name of an adult entertainment establishment unless and until he satisfies each of the following requirements.

(a) gives the County Administrator thirty (30) days notice in writing of the proposed name change;

(b) pays the County Administrator a three dollar ($3.00) change-of-name fee; and

(c) complies with Section 865.09, Florida Statutes (1985).

Section 2-11. Suspension of License.

(a) Violation of a Building, Fire, Health, or Zoning Statute, Code, Ordinance or Regulation. In the event a Department learns or finds upon sufficient cause that a licensed adult entertainment establishment is operating in violation of a building, fire, health, or zoning statute, code, ordinance or regulation, whether federal, state or local, contrary to the respective general requirements of Section 4-1(a),(b),(c), or (d), the Department shall promptly notify the licensee of the violation and shall allow the licensee a seven (7) day period in which to correct the violation. If the licensee fails to correct the violation before the expiration of the seven (7) day period the Department shall notify the County Administrator, who shall forthwith suspend the license, and shall notify

the licensee of the suspension. The suspension shall remain in effect until the Department notifies the County Administrator in writing that the violation of the provision in question has been corrected.

(b) Illegal Transfer. In the event the County Administrator learns or finds upon sufficient cause that a licensee engaged in a license transfer contrary to Section 2-9, he shall forthwith suspend the license, and notify the licensee of the suspension. The suspension shall remain in effect until the County Administrator is satisfied that the requirements of Section 2-9(a) have been met.

(c) Convictions for Violations of SECTION 5 of this Ordinance.

(1) In the event three (3) or more violations of SECTION 5 of this Ordinance occur at an adult entertainment establishment within a two (2) year period, and convictions result from at least three (3) of the violations, the County Administrator shall, upon the date of the third conviction, suspend the license, and notify the licensee of the suspension. The suspension shall remain in effect for a period of thirty (30) days.

(2) In the event one (1) or more violations of SECTION 5 of this Ordinance occur at the establishment within a period of two (2) years from the date of the violation from which the conviction resulted for which the license was suspended for thirty (30) days under subsection (c)(1), but not including any time during which the license was suspended for thirty (30) days, and a conviction results from one (1) or more of the violations, the County Administrator shall, upon the date of the first conviction, suspend the license again, and notify

the licensee of the suspension. The suspension shall remain in effect for a period of ninety (90) days.

(3) In the event one (1) or more violations of SECTION 5 of this Ordinance occur within a period of two (2) years from the date of the violation from which the conviction resulted for which the license was suspended for ninety (90) days under subsection (c)(2), but not including any time during which the license was suspended for ninety (90) days, and a conviction results from one (1) or more of the violations, the County Administrator shall, upon the date of the first conviction, suspend the license again, and notify the licensee of the suspension. The suspension shall remain in effect for a period of one hundred eighty (180) days.

(4) The transfer of renewal of a license pursuant to this Ordinance shall not defeat the terms of subsection (c)(1)-(3).

(d) Effective Date of Suspension. All periods of suspension shall begin sixteen (16) days after the date the County Administrator mails the notice of suspension to the licensee or on the date the licensee delivers his license to the County Administrator, whichever occurs first.

Section 2-12. Revocation of License.

(a) False Information. In the event the County Administrator learns or finds upon sufficient cause that a license was granted based upon false information, misrepresentation of fact, or mistake of fact, he shall forthwith revoke the license, and notify the licensee of the revocation.

(b) Convictions for Violation of SECTION 5 of this Ordinance.

(1) In the event one (1) or more violations of SECTION 5 of this Ordinance occur at an adult entertainment establishment which has had a license suspended for a period of one hundred eighty (180) days pursuant to Section 2-9(c)(3), and the violation(s) occur within a period of two (2) years from the date of the violation from which the conviction resulted for which the license was suspended for one hundred eighty (180) days, but not including any time during which the license was suspended for one hundred eighty (180) days, the County Administrator shall forthwith revoke the license, and notify the licensee of the revocation.

(2) The transfer or renewal of a license pursuant to this Ordinance shall not defeat the terms of subsection (b)(1).

(c) Revocation of License. Any person or legal entity who is required by this Ordinance to possess a license for engaging in any business enterprise, profession or other activity included and regulated within this Ordinance who as a licensee, or as an agent or employee of such licensee, under this Ordinance is convicted of a crime involving moral turpitude committed within the course of said licensed business activity, or is, or has been convicted of a felony or a first degree misdemeanor directly related to the specific licensed business activity, upon due and proper record of such conviction presented to the Board of County Commissioners of Citrus County, shall be subject to said license being revoked upon resolution of the Board of County Commissioners. Written

notice of the effective date of such revocation shall be forwarded to the licensee with a copy of such revocation filed with the Sheriff's office and with the office of the County Administrator. The licensee shall have the right to request a public hearing before the Board of County Commissioners and present evidence and testimony why such license should not be revoked. Nothing herein shall be construed to prevent the Board of County Commissioners, upon a showing of good cause, from reissuing a license to any person or entity whose license has been previously revoked. Such reinstatement, upon approval by the Board of County Commissioners of Citrus County, shall be pursuant to the procedures heretofore established in this Ordinance. Notification of such reinstatement shall be furnished to the Sheriff's Office and the office of the County Administrator. Revocation of license under this section shall be in addition to any other penalties provided by law.

(d) Effect of Revocation. If a license is revoked, the licensee shall not be allowed to obtain another adult entertainment license for a period of ten (10) years and no license shall be issued again to any other person for the location upon which the adult entertainment establishment was situated.

(e) Effective Date of Revocation. The revocation shall take effect sixteen (16) days after the date the County Administrator mails the notice of revocation to the licensee or on the date the licensee delivers his license to the County Administrator, whichever happens first.

SECTION 3. PERMITTING PROVISIONS

Section 3-1. Adult Entertainment Permit Required.

(a) Subject to subsection (b), no individual may work in an adult entertainment establishment without having applied for and having been granted a temporary or permanent adult entertainment permit from the County Administrator under this Ordinance.

(b) An individual who is to engage exclusively in performing janitorial or maintenance services at an adult entertainment establishment, or an individual who is to engage exclusively in performing barbering or cosmetology pursuant to a license issued under, respectively, Chapters 476 or 477, Florida Statutes (1985), is exempt from subsection (a).

Section 3-2. Application Requirement for Adult Entertainment Permit; Contents of; Application Fee; Rejection of Incomplete Application; Consent by Applicant.

(a) Required. Any individual desiring to work in an adult entertainment establishment shall file with the County Administrator a sworn permit application on a standard application form supplied by the County Administrator.

(b) Contents of Application. The completed application shall contain the following information and shall be accompanied by the following documents:

(1) The applicant shall state his legal name and any aliases;

(2) The applicant shall submit satisfactory proof that he is at least eighteen (18) years of age, and a

photocopy of such proof shall be retained by the County Administrator;

(3) The applicant shall furnish a set of his fingerprints which have been taken by the Sheriff;

(4) The applicant shall present a recent color photograph of himself which has been taken by the County Administrator;

(5) The applicant shall state his mailing address and, if different, his address of residence;

(6) The applicant shall reveal his driver's license number;

(7) The applicant shall state whether he has, within the ten (10) year period immediately preceding the date of the application, been convicted of a specified criminal act, and if so, the specified criminal act involved, the date of conviction, and the place of conviction;

(8) The applicant shall indicate whether he or she has had a previous permit under this Ordinance which has been suspended or revoked, and, if so, the date of the suspension or revocation;

(9) Any additional information which the County Administrator deems necessary to effectuate the language and purpose of this Ordinance.

(c) Application Fee. Each application for a permit shall be accompanied by a non-refundable fee of fifty dollars ($50.00). If the application for a permit is approved and a permit is granted, the fee shall be applied as a credit towards the permit fee required pursuant to Section 2-7 of this Ordinance.

(d) Rejection of Incomplete Application. In the event the County Administrator determines or learns at any time the applicant has not properly completed the application for a permit, he shall promptly notify the applicant of such fact, and shall automatically reject the application.

(e) Consent. By applying for a permit under this Ordinance, the applicant shall be deemed to have consented to the provisions of this Ordinance and to the exercise by the County Administrator, the Sheriff and, if applicable, the Health Department, of their respective responsibilities under this Ordinance.

Section 3-3. Temporary Permit. The County Administrator shall issue a temporary permit to an applicant on the date that the applicant properly files an application. The temporary permit shall automatically expire after fourteen (14) days.

Section 3-4. Investigation of Application. Upon receipt of an application properly filed with the County Administrator and upon payment of the non-refundable application fee, the County Administrator shall immediately stamp the application as received and shall immediately thereafter send a fingerprint card to the Sheriff, and, if the applicant has indicated an intention to work in an adult dancing establishment, notify the Health Department of the applicant's name and address. The County Administrator, and, if applicable, the Health Department, shall promptly conduct an investigation of the applicant in accordance with their respective responsibilities under Section 2-1 of this Ordinance.

Section 3-5. Grant; Denial.

(a) Time Period for Granting or Denying Permit. The County Administrator shall grant or deny any application within fourteen (14) days from the date of its proper filing.

(b) Granting of Permit. If the Sheriff, the County Administrator, and, if applicable, the Health Department, have each approved of the application, the County Administrator shall grant the application, notify the applicant of the granting, and issue a permit to the applicant.

(c) Denying of Permit.

(1) The County Administrator shall deny the application for any of the following reasons:

(A) the applicant is less than eighteen (18) years of age;

(B) the application contains material false information;

(C) the applicant has had a previous permit under this Ordinance which has been suspended or revoked; or

(D) the granting of the application would violate a statute or ordinance or an order from a court of law which prohibits the applicant from obtaining an adult entertainment permit.

(2) If the County Administrator denies the application, it shall notify the applicant of the denial, and state the reason(s) for the denial.

Section 3-6. Contents of Permit; Scope; Term of Permit; Renewals; Expiration; Cancellation.

(a) Contents. The permit shall contain the following:

(1) The permitee's legal name and any aliases;

(2) The permitee's residential address;

(3) The permitee's sex;

(4) The permittee's birth date;

(5) The permittee's signature;

(6) The color photograph of the permittee which was taken by the County Administrator;

(7) The expiration date of the permit; and

(8) The signature of the County Administrator.

(b) Scope. The permit shall entitle the permittee to work in any adult entertainment establishment.

(c) Term. All permits issued under this Ordinance shall remain valid for two (2) years from the date of issuance.

(d) Renewal. Permits shall be renewed on or before two (2) years from the date of issuance. A permittee shall be entitled to a renewal of his or her permit, as a matter of course, upon payment of a fifty dollar ($50.00) fee.

(e) Expiration. A permit that is not renewed on or before two (2) years from the date of issuance shall expire. An expired permit may be renewed within thirty (30) days upon presentment of an affidavit by the permittee stating that he has not engaged in any work at any

adult entertainment establishment subsequent to expiration, upon payment of the permit fee of fifty dollars ($50.00), and upon payment of a penalty fee of ten dollars ($10.00).

(f) Cancellation. All expired permits not renewed within thirty (30) days shall be canceled summarily by the County Administrator.

Section 3-7. Permit Fee.

The fee for a permit under this Ordinance shall be fifty dollars ($50.00).

Section 3-8. Suspension of Permit.

(a) Conviction for Violation of SECTION 5 of this Ordinance. In the event a permittee commits one (1) or more violations of SECTION 5 of this Ordinance, and a conviction results from at least one (1) of the violations, the County Administrator shall, upon the date of the conviction, suspend the permit, and notify the permittee of the suspension. The suspension shall remain in effect for a period of ninety (90) days.

(b) Effective Date of Suspension. The period of suspension shall begin sixteen (16) days after the date the County Administrator mails the notice of suspension to the permittee or on the date the permittee delivers his permit to the County Administrator, whichever happens first.

Section 3-9. Revocation of Permit.

(a) Conviction for Violation of this Ordinance. In the event a permittee commits one (1) or more violations of SECTION 5 of this Ordinance within a period of two

(2) years from the date of the violation from which the conviction resulted for which the permit was suspended under Section 3-8, but not including any time during which the permit was suspended, and a conviction results from one (1) or more of the violations, the County Administrator shall, upon the date of the first conviction, revoke the permit, and notify the permitee of the revocation.

(b) Effect of Revocation. If a permit is revoked, the permittee shall not be allowed to obtain another adult entertainment permit for a period of five (5) years.

(c) Effective Date of Revocation. The revocation shall take effect sixteen (16) days after the date the County Administrator mails the notice of revocation to the permittee or on the date the permittee delivers his license to the County Administrator, whichever happens first.

SECTION 4. PROVISIONS FOR ADULT ENTERTAINMENT ESTABLISHMENTS

Section 4-1. General Requirements.

Each adult entertainment establishment shall, regardless of whether it is licensed, observe the following general requirements:

(a) conform to all applicable building statutes, codes, ordinances, and regulations, whether federal, state or local;

(b) conform to all applicable fire statutes, codes, ordinances, and regulations, whether federal, state or local;

(c) conform to all applicable health statutes, codes, ordinances, and regulations, whether federal, state or local;

(d) conform to all applicable zoning regulations and land use laws, whether state or local;

(e) keep the adult entertainment license posted in a conspicuous place at the establishment at all times, which license shall be available for inspection upon request at all times by the public;

(f) opaquely cover each non-opaque area through which a person outside the establishment may otherwise see inside the establishment;

(g) on the first Monday of every month provide the County Administrator with a listing of all persons who are, or have been employees at the establishment since the first Monday of the previous month, and their positions.

Section 4-2. Adult Theater.

In addition to the general requirements for an adult entertainment establishment contained in Section 4-1, an adult theater shall, regardless of whether it is licensed, observe the following special requirements:

(a) If the adult theater contains a hall or auditorium area, the area shall comply with each of the following provisions:

(1) have individual, separate seats, not couches, benches, or the like, to accommodate the maximum number of persons who may occupy the area;

(2) have a continuous main aisle alongside of the seating areas in order that each person seated in the areas shall be visible from the aisle at all times; and

(3) have a sign, posted in a conspicuous place at or near each entranceway to the hall or auditorium area which lists the maximum number of persons who may occupy the hall or auditorium area, which number shall not exceed the number of seats within the hall or auditorium area.

(b) If the adult theater contains adult booths, each adult booth shall comply with each of the following provisions:

(1) have a sign posted in a conspicuous place at or near the entranceway which states the maximum number of persons who may occupy the booth, which number shall correlate with the number of seats in the booth;

(2) have a permanently open entranceway not less than two (2) feet wide and not less than six (6) feet high, not capable of being closed or partially closed by any curtain, door, or other partition which would be capable of wholly or partially obscuring any person situated in the booth;

(3) have individual, separate seats, not couches, benches, or the like, which correlate with the maximum number of persons who may occupy the booth;

(4) have a continuous main aisle alongside the booth in order that each person situated in the booth shall be visible from the aisle at all times; and

(5) have, except for the entranceway, walls or partitions of solid construction without any holes or openings in such walls or partitions.

(c) If the adult theater is designed to permit outdoor viewing by persons seated in automobiles, it shall have the motion picture screen so situated, or the perimeter of the establishment so fenced, that the material to be seen by those persons may not be seen from any public right-of-way, property zoned for residential use, religious institution, educational institution, or park.

Section 4-3. Adult Dancing Establishment.

In addition to the general requirements for an adult entertainment establishment contained in Section 4-1, an adult dancing establishment shall, regardless of whether it is licensed, observe the following special requirements:

(a) it shall have a stage provided for the display or exposure of any specified anatomical area by an employee to a person other than another employee consisting of a permanent platform (or other similar permanent structure) raised a minimum of eighteen (18) inches above the surrounding floor and encompassing an area of at least one hundred (100) square feet; and

(b) any area in which a private performance occurs shall:

(1) have a permanently open entranceway not less than two (2) feet wide and not less than six (6) feet high, which entranceway is not capable of being closed or partially closed by any curtain, door, or other partition which would be capable of wholly or partially obscuring any person situated in the area; and

(2) have a wall-to-wall, floor-to-ceiling partition of solid construction without any holes or openings, which partition may be completely or partially transparent, and which partition separates the employee from the person viewing the display.

SECTION 5. CRIMINAL PROVISIONS

Section 5-1. Operation of Establishment Without Valid Adult Entertainment License.

It shall be unlawful for any person to be an operator of an adult entertainment establishment where the person knows or should know:

(a) that the establishment does not have an adult entertainment license for any applicable classification;

(b) that the establishment has a license which is under suspension;

(c) that the establishment has a license which has been revoked or canceled; or

(d) that the establishment has a license which has expired.

Section 5-2. Operation of Establishment Contrary to Certain Requirements.

(a) It shall be unlawful for any person to be an operator of an adult entertainment establishment which does not satisfy all of the general requirements of Section 4-1.

(b) It shall be unlawful for any person to be an operator of an adult theater which does not satisfy all of the special requirements of Section 4-2.

(c) It shall be unlawful for any person to be an operator of an adult dancing establishment which does not satisfy all of the special requirements of Section 4-3.

Section 5-3. Allowing Employee to Engage in Prohibited Acts.

It shall be unlawful for an operator of an adult entertainment establishment, regardless of whether it is licensed under this Ordinance, to knowingly or with reason to know, permit, suffer, or allow any employee:

(a) to engage in a straddle dance with a person at the establishment;

(b) to contract or otherwise agree with a person to engage in a straddle dance with a person at the establishment;

(c) to engage in any specified sexual activity at the establishment;

(d) to, where alcoholic beverages are sold, offered for sale, or consumed, display or expose at the establishment less than completely and opaquely covered human genitals or pubic region, less than completely and opaquely covered cleavage of the human buttocks, less than completely and opaquely covered areola and nipple of the human female breast, or human male genitals in a discernibly turgid state, even if completely and opaquely covered;

(e) to display or expose at the establishment less than completely and opaquely covered human genitals or pubic region, less than completely and opaquely covered cleavage of the human buttocks, less than completely and opaquely covered areola and nipple of the human female breast, or human male genitals in a discernibly turgid state, even if completely and opaquely covered, unless such employee is continuously positioned away from any person other than another employee, and unless such employee is in an area as described in Section 4.3.

(f) to display or expose any specified anatomical area while simulating any specified sexual activity with any other person at the establishment, including with another employee;

(g) to engage in a private performance unless such employee is in an area which complies with the special requirements of Section 4-3(b)(1) and (b)(2);

(h) to, while engaged in the display or exposure of any specified anatomical area, intentionally touch any person at the adult entertainment establishment, excluding another employee;

(i) to intentionally touch the clothed or unclothed body of any person at the adult entertainment establishment, excluding another employee, at any point below the waist and above the knee of the person, or to intentionally touch the clothed or unclothed breast of any female person; or

(j) subject to Section 3-1(b), to work who has not applied for and obtained a permit under this Ordinance.

Section 5-4. Advertising Prohibited Activity.

It shall be unlawful for an operator of an adult entertainment establishment, regardless of whether it is licensed under this Ordinance, to advertise the presentation of any activity prohibited by any applicable state statute or local ordinance.

Section 5-5. Minors Prohibited.

It shall be unlawful for an operator of an adult entertainment establishment, regardless of whether it is licensed under this Ordinance, to knowingly, or with reason to know, permit, suffer, or allow:

(a) admittance to the establishment of a person under eighteen (18) years of age;

(b) a person under eighteen (18) years of age to remain at the establishment;

(c) a person under eighteen (18) years of age to purchase goods or services at the establishment; or

(d) a person to work at the establishment as an employee who is under eighteen (18) years of age.

Section 5-6. Working at Establishment Which Does Not Have Valid Adult Entertainment License.

It shall be unlawful for any person to work in an adult entertainment establishment that he knows or should know is not licensed under this Ordinance, or which has a license which is under suspension, has been revoked or canceled, or has expired, regardless of whether he has applied for and obtained a temporary or permanent permit under this Ordinance.

Section 5-7. Working Without Permit Prohibited.

(a) Subject to Section 3-1(b), it shall be unlawful for any person to work in an adult entertainment establishment, regardless of whether it is licensed under this Ordinance, if the person has not applied for and obtained a temporary or permanent permit under this Ordinance.

(b) Subject to Section 3-1(b), it shall be unlawful for any person to work in an adult entertainment establishment, regardless of whether it is licensed under this Ordinance, unless the person has a temporary or permanent permit in his possession while working at the establishment.

(c) Subject to Section 3-1(b), it shall be unlawful for any person working in an adult entertainment establishment, regardless of whether it is licensed under this Ordinance, to fail to produce a temporary or permanent permit upon demand for inspection by any law enforcement officer.

Section 5-8. Engaging in Prohibited Activity.

It shall be unlawful for any employee of an adult entertainment establishment, regardless of whether it is licensed under this Ordinance:

(a) to engage in a straddle dance with a person at the establishment;

(b) to contract or otherwise agree with a person to engage in a straddle dance with a person at the establishment;

(c) to engage in any specified sexual activity at the establishment;

(d) to, where the employee knows or should know that alcoholic beverages are sold, offered for sale, or consumed, display or expose at the establishment less than completely and opaquely covered human genitals or pubic region, less than completely and opaquely covered cleavage of the human buttocks, less than completely and opaquely covered areola and nipple of the human female breast, or human male genitals in a discernibly turgid state, even if completely and opaquely covered;

(e) to display or expose at the establishment less than completely and opaquely covered human genitals or pubic region, less than completely and opaquely covered cleavage of the human buttocks, less than completely and opaquely covered areola and nipple of the human female breast, or human male genitals in a discernibly turgid state, even if completely and opaquely covered, unless such employee is continuously positioned away from any person other than another employee, and unless such employee is in an area as described in Section 4-3(a);

(f) to engage in the display or exposure of any specified anatomical area while simulating any specified sexual activity with any other person at the establishment, including with another employee;

(g) to engage in a private performance unless such employee is in an area which complies with the special requirements set forth at 4-3(b)(1) and (b)(2);

(h) to, while engaged in the display or exposure of any specified anatomical area, intentionally touch any person at the adult entertainment establishment, excluding another employee; or

(i) to touch the clothed or unclothed body of any person at the adult entertainment establishment, excluding another employee, at any point below the waist and above the knee of the person, or to touch the clothed or unclothed breast of any female person.

Section 5-9. Touching of Employee by Person.

(a) It shall be unlawful for any person in an adult entertainment establishment, other than another employee, to intentionally touch an employee who is displaying or exposing any specified anatomical area at the adult entertainment establishment.

(b) It shall be unlawful for any person in an adult entertainment establishment, other than another employee, to intentionally touch the clothed or unclothed breast of any employee, or to touch the clothed body of any employee at any point below the waist and above the knee of the employee.

Section 5-10. Exceeding Occupancy Limit of Adult Booth.

It shall be unlawful for any person to occupy an adult booth in which booth there are more people than that specified on the posted sign required by Section 4-2.

Section 5-11. Use of Restrooms or Dressing Rooms.

Notwithstanding any provision indicating to the contrary, it shall not be unlawful for any employee of an adult entertainment establishment, regardless of whether it is licensed under this Ordinance, to expose any specified anatomical area during the employee's bona fide use of a restroom, or during the employee's bona fide use of a dressing room which is accessible only to employees.

Section 5-12. Hours of Operation.

(a) It shall be unlawful for any operator of an adult entertainment establishment to allow such establishment to remain open for business, or to permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 2:00 a.m. and 9:00 a.m. of any particular day.

(b) It shall be unlawful for any employee of an adult entertainment establishment to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 2:00 a.m. and 9:00 a.m. of any particular day.

Section 5-13. Alteration of License or Permit.

(a) It shall be unlawful for any person to alter or otherwise change the contents of an adult entertainment license without the written permission of the County Administrator.

(b) It shall be unlawful for any person to alter or otherwise change the contents of an adult entertainment permit without the written permission of the County Administrator.

Section 5-14. False Statement or False Information in Applying for License or Permit.

(a) It shall be unlawful for any person applying for an adult entertainment license to make a false statement which is intended to facilitate the issuance of a license, or to provide false information which is intended to facilitate the issuance of a license.

(b) It shall be unlawful for any person applying for an adult entertainment permit to make a false statement which is intended to facilitate the issuance of a permit, or to provide false information which is intended to facilitate the issuance of a permit.

Section 5-15. Violations Subject to Criminal Prosecution.

Whoever violates any Section of SECTION 5 of this Ordinance may be prosecuted and punished as provided by Section 125.69, Florida Statutes (1985).

SECTION 6. MISCELLANEOUS PROVISIONS

Section 6-1. Appeals.

(1) Within fifteen (15) days of the mailing of a notice of denial of an application for a license or permit or a notice of suspension or revocation of a license or permit, the aggrieved party may file a notice of appeal with the Board.

(2) The notice of appeal shall be filed with the Clerk of the Board. The notice of appeal shall be accompanied by payment of a filing fee of fifty dollars ($50.00) to cover administrative costs. Upon receipt of the notice of appeal and upon payment of the accompanying fifty dollars ($50.00) filing fee, the Clerk shall schedule a hearing for as soon as the Board's calendar will allow. The Clerk shall provide the appellant with at least ten (10) days' notice of the time and place for the hearing.

(3) If, at the conclusion of the hearing, the Board finds that the license or permit should not have been denied, suspended, revoked, or canceled, it shall so

notify the County Administrator, who shall immediately grant or reissue the license or permit.

Section 6-2. Notice.

Any notice required under this Ordinance shall be accomplished by sending a written notification by certified mail to the mailing address set forth on the application for the license or a permit. This mailing address shall be considered the correct mailing address unless the County Administrator has been otherwise notified in writing.

Section 6-3. Immunity from Prosecution.

The County or any Department shall be immune from prosecution, civil or criminal, for reasonable, good-faith trespass upon an adult entertainment establishment while acting within the scope of its authority under this Ordinance.

Section 6-4. Powers of Board.

The Board may bring suit in the Circuit Court to restrain, enjoin or otherwise prevent the violation of this Ordinance.

Section 6-5. Repeal of Ordinance No. 88-05.

Citrus County Ordinance No. 88-05 is hereby repealed on the effective date of this ordinance.

Section 6-6. Effective Date

This Ordinance shall become effective as provided by Florida Law.

DONE AND ADOPTED this 24th day of May, 1988.

BOARD OF COUNTY
COMMISSIONERS OF CITRUS
COUNTY, FLORIDA

ATTEST:

/s/ Walt Connors
WALT CONNERS,
CLERK

By: /s/ William J. Hudson
WILLIAM J. "SKIP" HUDSON
FIRST VICE CHAIRMAN

APPROVED AS TO
FORM AND CORRECTNESS:

/s/ James A. Neal, Jr.
JAMES A. NEAL, JR.
ASSISTANT COUNTY ATTORNEY

Supreme Court, U.S.
FILED
SEP 19 1991
OFFICE OF THE CLERK

No. 91-307

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1991

----------O----------

CITRUS COUNTY, FLORIDA,

Petitioner,

v.

JOE REDNER, THOMAS GEORGE SECCHIARI, PHYLLIS PATRICK, TAMMY BENARD, and AMANDA OLIVER,

Respondents.

----------O----------

Petition for Writ of Certiorari to The United States Court of Appeals for the Eleventh Circuit

----------O----------

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

----------O----------

Luke C. Lirot, Esquire
THOMAS C. LITTLE, P.A.
2123 N.E. Coachman Road
Suite A
Clearwater, Florida 34625
(813) 874-2030
Attorney for Respondents

QUESTIONS PRESENTED

I. Whether the Full Faith and Credit Act, 28 U.S.C. § 1738, requires the federal courts (below), where Respondents challenged two adult-entertainment licensing ordinances on the same constitutional grounds to accord to the identical provisions of a successor, permanent licensing ordinance, containing a severability clause, the same preclusive effect, under Florida law, from a final judgment of the Florida courts, which upheld the constitutionality of the earlier, temporary, licensing ordinance, even in light of the clear facial unconstitutionality of the ordinance.

II. Whether under the *Rooker-Feldman* doctrine, the federal courts (below) lack jurisdiction to consider Respondents' challenges to the constitutionality of provisions in a successor, permanent adult-entertainment licensing ordinance, when the ordinance presented to the state courts was a different ordinance and was never considered by the highest state court.

LIST OF PARTIES

PETITIONERS

Appellees in the Eleventh Circuit Court of Appeals

CITRUS COUNTY, FLORIDA, a municipal corporation

CHARLES S. DEAN, individually and as Sheriff of Citrus County, Florida

SKIP HUDSON, acting Citrus County Commissioner sued individually*

ALEX GRIFFIN, acting Citrus County Commissioner sued individually*

WILLIAM F. BROSKA, acting Citrus County Commissioner sued individually*

JOHN BARNES, acting Citrus County Commissioner sued individually*

NICK BRYANT, acting Citrus County Commissioner sued individually

WAYNE WEAVER, current Citrus County Commissioner

CHESTER WHITE, SR., current Citrus County Commissioner

WILBUR LANGLEY, SR., current Citrus County Commissioner

GARY BARTELL, current Citrus County Commissioner

RESPONDENTS

Appellants in the Eleventh Circuit Court of Appeals

JOE REDNER

THOMAS GEORGE SECCHIARI

PHYLLIS PATRICK

TAMMY BENARD

AMANDA BENARD OLIVER

---

*Pursuant to Supreme Court Rule 40.3, Commissioners Hudson, Griffin, Broska, and Barnes will be replaced in their official capacity in this case by their successors in office: Wayne Weaver; Chester White, Sr.; Wilbur Langley, Sr.; and Gary Bartell, acting Commissioners. Petitioners did not list these individuals as parties.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED	3
STATEMENT OF THE CASE	5
WHY THE WRIT SHOULD BE DENIED	14
I. THE FULL FAITH AND CREDIT ACT, 28 U.S.C. § 1738, IS MISAPPLIED BY PETITIONER AND DID NOT REQUIRE THE COURT OF APPEALS TO AFFIRM THE LOWER COURT'S INVOCATION OF ABSTENTION.	14
A. The District Court's Abstention From The Merits Of Respondents' Challenges To 88-05 And 88-06 Was Improper.	14

B. The State Court Judgment On Respondents' Constitutional Challenges To 88-05 Does Not Preclude Challenges To The Provisions Of 88-06. 22

II. THE COURT OF APPEALS PROPERLY REJECTED THE PETITIONER'S ARGUMENT THAT THE *ROOKER-FELDMAN* DOCTRINE REQUIRES ABSTENTION OF RESPONDENTS' CONSTITUTIONAL CHALLENGES TO THE PROVISIONS OF 88-06. 28

CONCLUSION 30

TABLE OF AUTHORITIES

Authority	Page
Allen v. Allegheny Co., 196 U.S. 458, 25 S.Ct. 311, 49 L.Ed. 551 (1905)	29
ASARCO, Inc. v. Kadish, 490 U.S. 605, 109 S.Ct. 2037, 104 L.Ed.2d 696 (1989)	29
Avalon Cinema Corp. v. Thompson, 677 F.2d 659 (8th Cir. 1981)	17, 18 20
Barnes v. Glen Theater, 59 U.S.L.W. 4745, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991)	17
Ballard v. Wilson, 857 F.2d 1568 (5th Cir. 1988)	24
Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 83 S.Ct. 631, 9 L.Ed.2d 584 (1963)	25
Blount v. Rizzi, 400 U.S. 410 (1971)	27
California v. LaRue, 409 U.S. 109, 93 S.Ct. 390, 34 L.Ed.2d 3342 (1972)	17
Cotton States Mutual Ins. Co. v. Anderson, 749 F.2d 663 (11th Cir. 1984)	23
District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983)	29

Authority	Page
Dombrowski v. Pfister, 380 U.S. 479, 85 S.Ct. 1116 (1965)	21
Doran v. Salem Inn, Inc., 42 U.S. 922, 95 S.Ct. 2561, 45 L.Ed.2d 648 (1975)	15
Elrod v. Burns, 427 U.S. 347, 96 S.Ct. 2673 (1976)	25
Freedman v. Maryland, 380 U.S. 51 (1965)	25, 27
Freehling v. MGIC Financial Corp., 437 So.2d 191 (Fla. 4th DCA 1983)	23
FW/PBS v. City of Dallas, 493 U.S. 215 (1990)	12, 19 22, 25 26, 27
Hicks v. Miranda, 42 U.S. at 349, 95 S.Ct. 2281, 45 L.Ed.2d 2223 (1975)	15
Huffman v. Pursue, 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975)	23
I.A. Durbin, Inc. v. Jefferson National Bank, 793 F.2d 1541 (11th Cir. 1986)	23
Johnson v. New York Life Ins. Co., 187 U.S. 491, 23 S.Ct. 194, 47 L.Ed. 273 (1903)	29
Kremer v. Chemical Construction Corp., 456 U.S. at 483, 102 S.Ct. at 1898	22, 24

Authority	Page
Kugler v. Helfant, 421 U.S. 117, 95 S.Ct. 1524, 44 L.Ed.2d 15 (1975)	16
McDonald v. City of West Branch, Mich., 466 U.S. 284, 104 S.Ct. 1799, 80 L.Ed.2d 302 (1984)	22
Migra v. Warren City School District, 465 U.S. 75, 104 S.Ct. 892, 70 L.Ed.2d 56 (1984)	22
Mobile Oil Corp. v. Shevin, 354 So.2d 372 (Fla. 1977)	23
Morgan v. City of Rawlins, 792 F.2d 975 (10th Cir. 1986)	28
National Socialist Party v. Skokie, 432 U.S. 43 (1977)	27
New York Times Co. v. United States, 402 U.S. 713, 91 S.Ct. 2140, 29 L.Ed.2d 822 (1941)	25
11126 Baltimore Blvd. v. Prince George's County, Maryland, 110 S.Ct. 2580 (1990)	19
Parsons Steel, Inc. v. First Alabama Bank, 474 U.S. at [illegible], 106 S.Ct. at 772	22
Pennzoil Company v. Texaco, Inc., 481 U.S. 1, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987)	15
Provau v. State Farm Mutual Automobile Ins. Co., 772 F.2d 817 (11th Cir. 1985)	23

Authority	Page
R&S Partnership v. Martin Schaffel Enterprises, Inc., 529 So.2d 794 (Fla. 3d DCA 1988)	23
Redner v. Citrus County, 919 F.2d 646 (11th Cir. 1990)	2, 16 29
Rooker v. Fidelity Trust Company, 263 U.S. 413 44 S.Ct. 149, 68 L.Ed. 362 (1923)	29
Samuels v. Mackell, 401 U.S. 66, 91 S.Ct. 764, 27 L.Ed.2d 688 (1971)	15
Schad v. Mt. Ephraim, 452 U.S. 61, 101 S.Ct. 2176, 68 L.Ed.2d 671 (1981)	17
Seaboard Coastline R.R. Company v. Cox, 338 So.2d 190 (Fla. 1976)	23
S.E.L. Maduro (Fla.), Inc. v. M/V Antonio de Gastaneta, 83 F.2d 1477 (11th 1987)	23
Sendak v. Nihiser, 431 U.S. 961, 97 S.Ct. 2914, 53 L.Ed.2d 1057 (1977)	22, 23
Shuttlesworth v. City of Birmingham, 394 U.S. 147, 89 S.Ct. 935 (1971)	27
754 Orange Ave. v. City of West Haven, Conn., 761 F.2d 105 (1985)	19, 20
United Books v. Conte, 739 F.2d 30 (1st Cir. 1984)	24

Authority	Page
United States v. O'Brien, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968)	18
Western Life Indem. Co. v. Rupp, 235 U.S. 261, 35 S.Ct. 37, 59 L.Ed. 220 (1914)	29
Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971)	14, 15 16, 17 21, 23
Constitutional Provisions:	
United States Constitution Amendment 1	3
United States Constitution Amendment 14	3
Federal Statutes:	
28 U.S.C. § 1254	2
28 U.S.C. § 1257	29
28 U.S.C. § 1738	3, 14 22, 24
42 U.S.C. § 1983	4, 10 24
42 U.S.C. § 1985(3)	4, 11

Authority	Page
Florida Statutes:	
Chapter 125	9
Citrus County Ordinances:	
Citrus County Ordinance 88-05	7, 8, 9 10, 11 12, 14 16, 20 21, 22 24, 25 26, 27 29
Citrus County Ordinance 88-06	4, 9, 10 14, 21 22, 28 29
Citrus County Ordinance 88-A51	9, 10, 11 12
Other Authorities:	
Full Faith and Credit and Section 1983: A Reappraisal, 63 N.C.L.Rev. 59 (1985)	24

No. 91-307

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1991

----------O----------

CITRUS COUNTY, FLORIDA,

Petitioner,

v.

JOE REDNER, THOMAS GEORGE SECCHIARI, PHYLLIS PATRICK, TAMMY BENARD, and AMANDA OLIVER,

Respondents.

----------O----------

Petition for Writ of Certiorari to The United States Court of Appeals for the Eleventh Circuit

----------O----------

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

----------O----------

Respondents, Joe Redner, Thomas George Secchiari, Phyllis Patrick, Tammy Benard and Amanda Benard Oliver urge this Court to deny the Petition for Writ of Certiorari to review the judgments and opinion of the United States Court of Appeals for the Eleventh Circuit, entered in this proceeding on December 18, 1990, and May 20, 1991.

----------O----------

OPINIONS BELOW

The Opinions of the United States Court of Appeals for the Eleventh Circuit are a December 18, 1990 affirmance in part and reversal in part with remand (of the ruling by the district court), 919 F.2d 646 (11th Cir. 1990), set out as Appendix A of the *Petition*; and a May 20, 1991 order denying a motion for rehearing, set out as Appendix B of the *Petition*.

----------O----------

JURISDICTION

This Court has jurisdiction to review those decisions of the court of appeals, pursuant to 28 U.S.C. § 1254.

----------O----------

CONSTITUTIONAL, STATUTORY, AND ORDINANCE PROVISIONS

UNITED STATES CONSTITUTION

Amendment 1

Congress shall make no law ... abridging the freedom of speech ...

Amendment 14, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protections of the laws.

UNITED STATES CODE

28 U.S.C. Section 1738

The Full Faith and Credit Act, 28 U.S.C. § 1738, is set forth as Appendix "C" of the *Petition*.

42 U.S.C. *Section 1983*

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. ...

42 U.S.C. Section 1985(3)

If two or more persons in any State or Territory conspire ... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws ... whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against one or more of the conspirators.

ORDINANCES ENACTED BY CITRUS COUNTY, FLORIDA

Ordinance 88-05 and Ordinance 88-06 of Citrus

County, Florida are reprinted and included in their entirety in the Appendix to the *Petition* in Appendices "D" and "E".

----------O----------

STATEMENT OF THE CASE

The Petitioner sets out a Statement of the Case which fails to include a substantial amount of historical factual material which is critical for this Court to adequately consider the questions presented for review. This material is respectfully submitted herein.

It is important to note that the same decision of the Court of Appeals, which is at issue herein, is also the basis for another Petition for Writ of Certiorari filed with this Court (Case No. 91-316). The questions presented for review bear some similarity, but are not identical, and the Petitions focus on different aspects of the Court of Appeals' decision. A proper recitation of all pertinent facts is still critical for any consideration.

In early March of 1988, Respondent Redner became interested in opening and operating an adult entertainment establishment in Homosassa Springs, an unincorporated community located in Citrus County, Florida. In this endeavor, Redner investigated all applicable Citrus County ordinances, rules, regulations and permitting requirements. On the basis of this investigation, which included direct inquiries to Citrus County employees regarding any such restrictions which applied to the contemplated business,

Redner determined properly that there were no regulatory obstacles in effect which would prevent him from opening an adult entertainment establishment at a specific premises. Redner was clear and candid in his description of the proposed business.

On or about March 17, 1988, on the basis of this reliance, Redner entered into a lease for the subject premises for eighteen (18) months, thereby incurring an obligation of $36,000.00 for the term of the lease. At this point in time, Redner also undertook repairs and alterations to the premises to facilitate the presentation of performance dance exhibitions at a cost of approximately $10,000.00. The leased premises was located in a commercially zoned area and was formerly a bar which served alcoholic beverages.

In an effort to comply with all existing local requirements to open the business, the proper agencies were contacted in order to secure all appropriate inspections and permits. On March 23, 1988, the premises was inspected by the Citrus County Public Health Unit for food service inspections and permits. A fire inspection was also conducted.

The proper permits were issued on March 24, 1988. Also on that date, occupational licenses for "Dance Hall", "Entertainment Cafe", and one for "Merchandise Vending Machines" were issued by the Citrus County Tax Collector in preparation for the imminent opening of the establishment. Redner was forthright in his description of the business to County officials in his attempt to get all

proper licenses and permits. No specific occupational license designation existed at that time relating to adult entertainment facilities. No attempt was made to hide the intended use of the leased premises from any Citrus County employee consulted, or from the public in general. Presumably, because of Redner's candor and the nature of the business, the anticipated opening of the establishment was an event which was surrounded by extensive media attention. No other adult entertainment facility existed in Citrus County prior to Redner's endeavor.

The Petitioner uses March 25, 1988 as the starting point in the Statement of the Case contained in the Petition. It was on this date that Redner announced he would open his establishment. On the same date, the Citrus County Board of County Commissioners met in emergency session and enacted Citrus County Ordinance 88-05, an emergency ordinance establishing licensing requirements for adult entertainment establishments and their employees. The nature of any alleged "emergency" is unknown other than the anticipated opening of Redner's use. A copy of the ordinance is attached as Appendix "D" to the *Petition*.

Emergency Ordinance 88-05 imposed the requirement that a license be obtained prior to the presentation of any constitutionally protected expression by any business deemed to be an adult use. The pertinent licensing application required the submission of extensive information and lengthy investigation by several administrative and law enforcement agencies. While there was a time limit for the granting or denial of a license, the provisions dealing with

the appeal of any such denial contained no time limit. The fee for any such license was $750.00.

The ordinance also imposed similar requirements that any employee working at any adult use establishment similarly obtain an adult use permit to legally be employed at any such establishment. The application requirements were again extensive and the time limits for the granting or denial of any application for such a permit, while limited, had no such limitation on any appeal process of the denial of any permit. A fee of $50.00 was required with any application for permit.

Besides the provisions regarding licensing and permitting contained in the ordinance, Section 2-8 stated that, "Each licensee shall keep such records and make such reports as may be required by the County Administrator and the departments to implement this ordinance and carry out its purpose." No limitation or definition was included in the ordinance to clarify this provision.

Section 5 of the ordinance established criminal penalties for any failure to comply with any provision of Citrus County Ordinance 88-05. These penalties were subsequently enforced on the Respondents.

In respect to any denial or revocation of a license, no provision for judicial review appeared anywhere in emergency Ordinance 88-05. The only appeal of any state action occasioned by the ordinance, which resulted in denial, was to the Board of County Commissioners, the same body with the ultimate responsibility for the administration of the ordinance (Section 6-1).

On March 29, 1988, Redner opened his establishment, and was arrested and charged with operating an adult entertainment establishment without a license. Two subsequent attempts to open the establishment also resulted in arrests.

On March 31, 1988, when Redner was arrested the third time, bond was placed at $250,000.00. Only when Redner agreed he would not again offer adult entertainment, unless either a court order or a license issued pursuant to Citrus County were obtained, was his bond reduced and his release effected.

On May 24, 1988, the Citrus County Board of Commissioners met in a regular session and approved Ordinance 88-06, an adult entertainment licensing ordinance substantially similar to 88-05, but with provisions providing additional bases for license denial and other substantive provisions. Ordinance 88-06 superseded Ordinance 88-05.

Also adopted on May 24, 1988, was Ordinance 88-A51, an ordinance amending the Citrus County zoning ordinance by establishing adult entertainment use regulations.

Because of Florida statutory law, a Florida political subdivision is precluded from enacting any preclusive zoning ordinance validly without complying with the proper notice and hearing requirements.[1] This procedure takes a

---

[1] Chapter 125, Florida Statutes, specifies the statutory requirements for the enactment of zoning ordinances. Section 125.66(5)(b)(1) states that, "The board of county commissioners shall hold two (2) advertised public hearings on the proposed ordinance or resolution. Both hearings shall be held after 5:00 P.M. on a weekday, and the first shall be held approximately seven (7) days after the day that the first advertisement is published. The second hearing shall be held approximately two (2) weeks after the first

substantial amount of time and cannot be done on an emergency basis.

It was subsequent to the passage of emergency Ordinance 88-05, that the procedure to adopt a zoning ordinance was initiated and resulted in the passage of Citrus County Ordinance 88-A51, a zoning ordinance which by its provisions made the establishment of an adult use, a non-conforming and illegal use because of the locational restrictions contained in the ordinance.

On the basis of the violations of emergency Ordinance 88-05, state criminal prosecutions ensued against Respondents herein. Charges were leveled against Redner as owner, Thomas Secchiari as manager, and Ms. Patrick, Ms. Benard, and Ms. Oliver as performance dancers. The first arrests occurred prior to any employee disrobing to the extent that any of the specified anatomical areas prohibited by the ordinance were displayed.

Redner, et al., after the state criminal prosecutions had been initiated, brought action in Federal court against the County, the County Commissioners individually, and the Sheriff, individually, to challenge the constitutionality of Ordinance 88-05 and predicated in part on 42 U.S.C. § 1983. This Federal action was filed March 31, 1988. A subsequent amendment to the action resulted in combined challenges to licensing Ordinances 88-05 and 88-06.

On motions to dismiss and motions to abstain from

---

hearing and shall be advertised approximately five (5) days prior to the pubic hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing." F.S. 125.66(5)(b)(1).

further proceedings, the District Court, Melton J., held that: (1) pending criminal proceedings in state court against promoters did not warrant abstention; (2) failure to allege compliance with notice requirements warranted dismissal without prejudice of pendent cause of action based on Florida law; (3) proposed class of practitioners of nude dance or adult entertainment was not type of class that would support civil rights conspiracy action; and (4) class composed of person whose activities conflict with Christian beliefs is not protected under § 1985(3).

Subsequent to the filing of the first federal action, a second action challenging Ordinance 88-A51 as a valid, content-neutral, time, place, and manner regulation and further challenging the ordinance (by alleging that Citrus County should be estopped from enforcing the zoning ordinance against Respondent Redner, because of the factual scenario of the instant case) was initiated. Both actions were consolidated for trial.

The District Court, in Case Numbers 88-50-Civ-Oc-12 and 88-193-Civ-Oc-12, William K. Thomas, J., sitting by designation, dismissed claims against the Commissioners and the Sheriff, abstained from deciding the constitutionality of the licensing ordinances, and upheld the validity of Ordinance 88-A51.

Redner, et al. appealed to the United States Court of Appeals, Eleventh Circuit, in Case No. 89-3823. The Eleventh Circuit affirmed the decision of the district court to abstain on Ordinance 88-05, to dismiss the individual Commissioners and Sheriff due to their immunity, and to

deny equitable estoppel against Citrus County's enforcement of Ordinance 88-A51. The decision of the District Court to abstain on Ordinance 88-06 was reversed and remanded for further proceedings. This reported decision is reprinted in Appendix "A" of the *Petition*.

Counsel for both Respondents and the County filed respective motions for rehearing and suggestions for rehearing *en banc*. Rehearing and rehearing *en banc* was denied on May 20, 1991.

In the state criminal cases, Redner was convicted on October 6, 1988 and was sentenced on October 17, 1988. Redner appealed the county court convictions to the circuit court for the Fifth Judicial Circuit of Florida, Case No. 88-499-CF. The state circuit court, in its appellate capacity, affirmed the convictions of the trial court and issued its mandate on August 13, 1990. Redner subsequently filed a petition for writ of certiorari with the appropriate Florida Fifth District Court of Appeal. The petition was denied on August 31, 1990. Redner then filed a motion for rehearing of said denial, which was itself denied on September 28, 1990, thereby exhausting Redner's state court remedies of the convictions and sentences at issue herein. All state court criminal action pertained only to Ordinance 88-05.

Despite the fact that, at each phase of the state court proceedings it was clearly shown that Ordinance 88-05 plainly lacked the adequate procedural safeguards mandated by this Court in the case of FW/PBS v. City of Dallas, 493 U.S. 215 (1990), no relief was given nor was any written opinion issued in any state court forum.

While the federal action progressed, no order to report from the trial court was received by Redner or his Counsel. It was not until April 16, 1991, that an order, reflecting a date of August 22, 1990, was received by Redner and his Counsel. Compliance with the order was physically impossible since it commanded Redner to report within ten (10) days of it date.

A Petition for Writ of Habeas Corpus was filed in the United States District Court for the Middle District of Florida, Case No. 91-90-Civ-Oc-14 on April 22, 1991. Filed contemporaneously with the Petition for Writ of Habeas Corpus was an emergency motion for stay of state court sentence.

On April 29, 1991, a stay of the state court sentence pending the administration of the Federal Petition for Habeas Corpus was sought in the state court. The state court declared that it had no jurisdiction to entertain such a stay and the motion was withdrawn. Respondent Redner surrendered himself to the Citrus County Sheriff instanter. Redner was immediately incarcerated and served out the remaining forty-seven (47) days of the sixty (60) day sentence imposed on him by the state trial court. The previous thirteen (13) days were served pending a determination in the state court as to whether to release Redner on supersedeas bond during the administration of his state court appellate proceedings. Redner was released on June 4, 1991 and completed the six (6) months probation imposed by the state court sentence.

The emergency motion in the district court for stay of

state court sentence was denied while Redner was incarcerated. The Petition for Writ of Habeas Corpus was still pending at the time this brief in opposition was filed.

----------O----------

WHY THE WRIT SHOULD BE DENIED

I. THE FULL FAITH AND CREDIT ACT, 28 U.S.C. § 1738, IS MISAPPLIED BY PETITIONER AND DID NOT REQUIRE THE COURT OF APPEALS TO AFFIRM THE LOWER COURT'S INVOCATION OF ABSTENTION.

A. The District Court's Abstention From The Merits of Respondents' Challenges To 88-05 and 88-06 Was Improper.

The Petitioner suggests that the Court of Appeals correctly affirmed the District Court's abstention from deciding the Respondents' claims concerning the constitutionality of 88-05, as necessarily and inevitably interfering with the ongoing state court criminal proceedings against Respondents.

In Younger v. Harris, this Court held that abstention is appropriate where federal jurisdiction has been invoked for the purpose of restraining state criminal proceedings; the Court recognized exceptions for bad faith, harassment, or a patently invalid state statute. 401 U.S. 37, 91 S.Ct. 746,

27 L.Ed.2d 669 (1971). The Court has further extended Younger to cases in which federal jurisdiction was invoked for the purposes of obtaining declaratory relief when the federal plaintiff is a defendant in a pending state criminal prosecution, if Younger would have barred an injunction in the circumstances. Samuels v. Mackell, 401 U.S. 66, 91 S.Ct. 764, 27 L.Ed.2d 688 (1971).[2]

The Court of Appeals, applying Younger and its progeny to the facts of this case, concluded that the district court properly abstained from deciding the constitutionality of Ordinance 88-05. The court recognized that, as long as a federal challenge to a state statute or local ordinance "relate[s] to pending state proceedings, proper respect for the ability of state courts to resolve federal questions presented in state court litigation mandates that the federal court stay its hand." Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 14, 107 S.Ct. 1519, 1527, 95 L.Ed.2d 1 (1987).

The Court of Appeals recognized that the state criminal proceedings were well under way by the time, "any proceedings of substance on the merits [had] taken place in federal court." (citing Hicks, 422 U.S. at 349, 95 S.Ct. at 2292). This threshold Younger consideration was deemed an appropriate basis to invoke the doctrine of abstention.

In addressing the alleged bad faith of Citrus County, (as

[2]Younger was further extended when the Supreme Court held that federal courts may not provide declaratory relief if a state prosecution is commenced against the federal plaintiffs "after the federal complaint is filed but before any proceedings of substance on the merits have taken place in the federal court ..." Hicks v. Miranda, 422 U.S. 332, 349, 95 S.Ct. 2281, 2292, 45 L.Ed.2d 2223 (1975); see also Doran v. Salem Inn, Inc., 422 U.S. 922, 95 S.Ct. 2561, 45 L.Ed.2d 648 (1975).

suggested by the sequence of events) as a possible exception to the Younger doctrine, the court focused only on a consideration of the presence of state prosecutions undertaken in bad faith.[3]

The Court of Appeals stated that Redner presented no evidence that the prosecution was brought without a reasonable likelihood of obtaining a valid conviction and (in Footnote 8 of the reported opinion) suggested that the only bad faith that Redner asserted was the County's enactment of an ordinance directed solely at him one day before he planned to open his adult entertainment facility.[4]

The Court of Appeals further stated that, "Nothing about that act by the County seems to establish, in itself, bad faith". (Footnote 8 of the Opinion, 919 F.2d at 650).

There is precedent to the contrary which supports the bad faith argument. In providing this authority to the various courts which have administered the many legal actions which grew from the instant facts, the First Amendment status of the anticipated business has been

---

[3]Bad faith was defined as "a prosecution (which) has been brought without a reasonable expectation of obtaining a valid conviction". Kugler v. Helfant, 421 U.S. 117, 126 n.6, 95 S. Ct. 1524, 1531 n.6, 44 L. Ed. 2d 15 (1975).

[4] At the emergency hearing conducted for the enactment of Ordinance 88-05, the acting commissioners made comments like, "[help] this board to close that place down" and "get out, get after the man that owns the property who has leased it to [Respondent] ... see if maybe you could get him to change his mind and do whatever he has to do ... see if you can convince him that he's made a mistake." and "I think you know what I mean, but we need to, again, restrict our comments to the thing in front of us to make sure because this thing may end up in court. We want to make sure that we don't mess it up by what we say in public ..." (Commissioners Broska and Bryant).

continually stressed.[5]

In the instant case, the factual scenario and sequence of events indicate clearly the existence of bad faith and the imposition of an unconstitutional prior restraint sufficient to qualify as an exception to the Younger abstention doctrine.

In Avalon Cinema Corporation v. Thompson, 677 F.2d 659 (8th Cir. 1981) {modified as to Attorneys Fees, 689 F.2d 187 (8th Cir. 1982)}, the factual scenario was almost identical to the situation herein. In Avalon, building permits to construct a movie theatre and bookstore at a single location in North Little Rock, Arkansas were obtained on September 30, 1980. At that point in time, the location was properly zoned as a commercial area. Also on that date, the proper occupational license (or privilege license) to operate a movie theatre was obtained. Avalon planned to exhibit at the theatre sexually-oriented films to consenting adults over eighteen (18) years of age. There were no adult movie theatres in the City at the time, and none, other than Avalon, was preparing to open. Money was spent remodelling and preparing the theatre for its commercial opening.

The City had a separate privilege license for "adult" bookstores in addition to the license for bookstores generally. It did not have a separate license for "adult"

---

[5]As this Court has consistently recognized, the instant case involves the attempted presentation of entertainment held to be expression which is entitled to limited protection under the First Amendment. California v. LaRue, 409 U.S. 109, 93 S. Ct. 390, 34 L. Ed. 2d 3342 (1972); Schad v. Mt. Ephraim, 452 U.S. 61, 101 S. Ct. 2176, 68 L. Ed. 2d 671 (1981); Barnes v. Glen Theater, 59 U.S.L.W. 4745, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991). This is critical in any consideration of bad faith.

movie theatres.

On November 19, 1980, Avalon secured the privilege license to operate an adult bookstore at the selected site. That same day, the North Little Rock City Council convened a special meeting for the purpose of enacting an emergency zoning ordinance that prohibited, within one hundred yards of specified structures and areas in the City, the exhibition or sale of any sexually-oriented film. The Avalon Theatre was located within one hundred yards of a residential area. The emergency ordinance effectively precluded Avalon from legally commencing business.

The Avalon court, in concluding that the ordinance could not be squared with the relevant precedents under the First Amendment, found that the action of the City failed to meet the four part test in United States v. O'Brien, 391 U.S. 367, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968), and called into question not only the applicability of the evidentiary basis used to support the ordinance, but the timing of the enactment of the ordinance as well.

The application to the instant case is clear. In both situations, municipal legislation is arguably being utilized to preclude specific parties from the presentation of First Amendment protected expressive entertainment. This Court has recognized no import in this distinction, clearly indicating that when either zoning or licensing ordinances are utilized impermissibly to restrain First Amendment

protected activities, they are equally as invalid.[6]

In 754 Orange Ave v. City of West Haven, Conn., 761 F. 2d 105 (1985), the court affirmed a lower court injunction against the City of West Haven from enforcing its zoning and licensing ordinances against a company wishing to present sexually-oriented entertainment within a leased premises.

In 754 Orange, the factual scenario is again almost identical to the instant case. On February 24, 1984, 754 Orange applied to the City for a building permit to make renovations to a leased premises in order to open an adult bookstore and theater. The City had a zoning ordinance which placed restrictions on amusement and entertainment facilities, but its applicability to the use contemplated by 754 Orange was "unclear", save for a provision involving locational distance restrictions to schools, parks or playgrounds, which provision was clearly not applicable to 754 Orange because the nearest preclusive use was over 1,000 feet away.

The City also had a licensing and permitting ordinance that was similarly unclear in addressing the applicability to the coin operated viewing machines contemplated for the leased premises. None of these issues were addressed or resolved when 754 Orange applied to the City for a building permit, which the City refused to issue.

---

[6] See FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990), in which a licensing ordinance was held unconstitutional on First Amendment issues, and 11126 Baltimore Blvd. v. Prince George's County, Maryland, 110 S.Ct. 2580 (1990) in which the same First Amendment safeguards were applied to a zoning ordinance.

The 754 Orange court addressed several First Amendment issues, but the most salient application to the instant case is the following:

> "In addition, section 32-2.7 is impermissible as enacted, because its adoption strongly suggests that it was aimed solely at 754 Orange. Only after the City learned that 754 Orange's leased premisses is beyond 1,000 feet from any school, park or playground did the City amend the ordinance so as to include 754 Orange's building within its scope. It is true that, as a matter of general zoning law in Connecticut, a permit applicant does not have a vested right in the existing classification of his land; instead his right to establish a particular use may be summarily terminated by an amendment that reclassifies his land and outlaws the use in question. (Citation omitted.)
>
> "Even as a matter of zoning law, however, a court will not allow changed building zone regulations to act as a bar to a building project where it would be inequitable to do so." (Citation omitted.) Id. at 113.

The notable similarities between the factual scenarios of Avalon and 754 Orange are clear evidence that Citrus County acted in an impermissible manner in its "emergency" enactment of Ordinance 88-05. It is axiomatic that the imposition of municipal legislation which results in a discriminatory prior restraint should be

construed as an act of bad faith.[7] On facts that are this obvious, such bad faith should clearly suffice as an exception to the Younger abstention doctrine.

The Petitioner urges that the provisions of 88-06 which are identical to 88-05 are severable and also urges that the district court's abstention from the merits of Respondents' challenges to the identical provisions in 88-06 was equally mandatory under Younger v. Harris.

For the reasons specified in support of not exercising abstention as to 88-05, the Respondents would submit that the Court of Appeals reached the correct conclusion in deciding not to abstain in considering Ordinance 88-06.[8]

The Petitioner has not made a convincing argument in asserting this basis for the issuance of the writ.

---

[7]The exception noted in Younger, and based on Dombrowski v. Pfister, 380 U.S. 479, 85 S.Ct. 1116, (1965) is appropriately applied to the circumstances of the instant case.

> "'[T]he threats to enforce the statutes against appellants are not made with any expectation of securing valid convictions, but rather are part of a plan to employ arrests, seizures, and threats of prosecution under color of the statute to harass appellants and discourage them and their supporters from asserting and attempting to vindicate the constitutional rights of Negro citizens of Louisiana.' 380 U.S., 482, 85 S.Ct. at 1118-1119, Id. at 752.

[8]The Court of Appeals held, "The presence in Ordinance 88-06 of substantive provisions absent from Ordinance 88-05 potentially requires that each of Ordinance 88-06's provisions be construed in the context of these additional substantive provisions. Therefore, even if the federal district court had held Ordinance 88-06 might have been persuasive authority in the state court, but that such a federal court decree would have inevitably barred a contrary state judgment on the constitutionality of a different ordinance is doubtful. . . . For example, the federal court might have held - or may still hold - 88-06 unconstitutional on the basis of provisions in 88-06 but not in 88-05 . . . In addition, the state criminal proceedings would not necessarily determine the constitutionality of Ordinance 88-06." 919 F.2d at 650, n.9 & n.10.

B. The State Court Judgment On Respondents' Constitutional Challenges To 88-05 Does Not Preclude Challenges To The Provisions Of 88-06.

The Petitioner urges that the Full Faith and Credit Act, 28 U.S.C. § 1738[9], which obliges a federal court to give the same preclusive effect to a state court judgment, as it would be given under the law of the state in which the judgment was rendered[10], precludes the Respondent from relitigating similar constitutional challenges to Ordinance 88-06 which have been decided in the state courts in reference to Ordinance 88-05. This contention is without merit.

In the instant case, Ordinances 88-05 and 88-06 were challenged on several constitutional grounds and particularly on the basis of clear facial inadequacies. The facial absence of any of the adequate procedural safeguards, as mandated by the recent decision of this Court in FW/PBS, Inc. v. City of Dallas, 110 S.Ct. 596 (1990), gives clear evidence of these inadequacies.

The licensing scheme imposed by Ordinances 88-05 and 88-06 was alleged by Respondents to be an unconstitutional prior restraint. Any system of prior restraints on expression comes before the court bearing a heavy presumption against its constitutional validity. Sendak v.

---

[9]By the Full Faith and Credit Act, Congress implemented the Full Faith and Credit Clause of the Constitution, art. IV, § 1, extending to the federal courts the same requirement obligatory to state courts. Migra v. Warren City School Dist., 465 U.S. 75, 80, 104 S.Ct. 892, 896, 70 L.Ed.2d 56 (1984); Kremer v. Chemical Construction Corp., 456 U.S. at 483 n.24, 102 S.Ct. at 1898 n.24.

[10]Parsons Steel, Inc. v. First Alabama Bank, 474 U.S. at 525, 106 S.Ct. at 772; McDonald v. City of West Branch, Mich., 466 U.S. 284, 287, 104 S.Ct. 1799, 1801, 80 L.Ed.2d 302 (1984); Migra v. Warren City School Dist., 465 U.S. at 81, 104 S.Ct. at 896; Kremer v. Chemical Construction Corp., 456 U.S. at 466, 102 S.Ct. at 1889.

Nihiser, 97 S.Ct. 2914, 431 U.S. 961, 53 L.Ed.2d 1057 (1977); affirming lower court cited at 405 F.Supp. 482 (ND Ind 1974).

Federal courts are charged with the primary duty of vindicating federal rights. The Younger doctrine (discussed in the previous Section), in either its criminal or civil applications, allows intervention where the challenged statute is flagrantly and patently violative of express constitutional provisions. Huffman v. Pursue, 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482; rehearing denied 421 U.S. 971, 95 S.Ct. 1969, 44 L.Ed.2d 463 (1975).

In assessing the "Full Faith and Credit" or the impact of any "interference" from a ruling by the district court or the Court of Appeals on similar constitutional challenges to an ordinance which is not the basis for the state court criminal action, is the result of Petitioners' own choice to enact the later ordinance.

Whether the concept of collateral estoppel under Florida law[11] or the federal application of issue preclusion[12] arise as considerations, they do so as the indirect result of addressing challenges to an ordinance which is not itself the basis of state court criminal action.

The Petitioner asserts that the preclusive effect of a federal court ruling, on identical issues presented in earlier ongoing state criminal proceedings is exactly the interference barred by the Younger doctrine as well as the

---

[11] Mobil Oil Corp. v. Shevin, 354 So.2d 372, 374 (Fla. 1977); Seaboard Coast Line RR. Co. v. Cox, 338 So.2d 190, 191 (Fla. 1976); R & S Partnership v. Martin Schaffel Enterprises, Inc., 529 So.2d 794, 795 (Fla. 3d D.C.A. 1988); Freehling v. MGIC Financial Corp., 437 So.2d 191, 193 (Fla. 4th D.C.A. 1983).

[12] S.E.L. Maduro (Fla.), Inc. v. M/V Antonio de Gastaneta, 833 F.2d 1477, 1483 (11th Cir. 1987); I.A. Durbin, Inc. v. Jefferson Nat'l. Bank, 793 F.2d 1541, 1449-51 (11th Cir. 1986); Provau v. State Farm Mutual Automobile Ins. Co., 772 F.2d 817, 821-22 (11th Cir. 1985); Cotton States Mutual Ins. Co. v. Anderson, 749 F.2d 663, 665-67 (11th Cir. 1984).

subject of the application of the full faith and credit clause. In support of this, the cases cited by Petitioner as persuasive authority [Ballard v. Wilson, 856 F.2d 1568 (5th Cir. 1988); United Books, Inc. v. Conte, 739 F.2d 30 (1st Cir. 1984)] involved factual situations where the federal and state actions both involved the same legislation.

It must also be stressed that, in the instant case, the federal action is predicated on 42 U.S.C. § 1983[13]. Any analysis must be undertaken with a consideration of the underlying purposes of Section 1983 against the purposes of the Full Faith and Credit Act. This distinction becomes critical when the fact that the preclusive effect of 28 U.S.C. § 1738 may not be given in federal court to a constitutionally infirm judgment. Kremer v. Chemical Construction Corp., 456 U.S. 461, 102 S.Ct. 1883, 72 L.Ed.2d 262 (1982).[14]

The Respondents provided clear evidence in every state court forum that Ordinance 88-05 was constitutionally infirm.[15] Substantial authority questioning the lack of

---

[13]42 U.S.C. section 1983 was drafted to provide a federal forum for litigants who Congress feared might not receive substantial justice from a state court. The implementing statute for the full faith and credit clause, 28 U.S.C. section 1738, provides that a state's preclusion rules should control matters originally litigated in that state. When a state court has decided, or could have decided, issues related to a subsequent 1983 action, the underlying purposes of sections 1983 and 1738 are in direct conflict. Full Faith and Credit and Section 1983: A Reappraisal, 63 N.C.L.Rev. 59 (1985).

[14]See also the discussion of Kremer in Parker v. Danville Metal Stamping Company, Inc., 603 F.Supp. 182 at 188 (C.D. Il. 1985).

[15]The facial invalidity of Ordinance 88-05 was stressed in every forum. The Respondents were effectively and entirely precluded from the presentation of First Amendment protected expressive entertainment through the reactionary enactment of "emergency" Ordinance 88-05. The combination of this, with the irreparable harm caused by the Respondents' loss of their First Amendment rights, indicates that none of the state courts involved in this case adequately recognized the unconstitutionality of the ordinance. The following was stressed to every state court:

procedural safeguards and the possibility of an unconstitutional prior restraint (which became a reality) was pointed out in every forum. Cited by Respondents in every state court forum was the case of FW/PBS v. The City of Dallas, supra.[16]

"The loss of First Amendment freedoms, for even a minimal period of time, unquestionably constitutes irreparable injury. See New York Times Co. v. United States, 403 U.S. 713, 91 S.Ct. 2140, 29 L.Ed.2d 822 (1971). Since such injury was both threatened and occurring at the time of Respondents' motion and since Respondents sufficiently demonstrated a probability of success on the merits, the Court of Appeals might properly have held that the District Court abused its discretion in denying preliminary injunctive relief. See Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 67, 83 S.Ct. 631, 637, 9 L.Ed.2d 584 (1963)." Elrod v. Burns, 427 U.S. 347, 96 S.Ct. 2673 (1976).

[16]In FW/PBS, this Court reviewed a comprehensive ordinance adopted by the City of Dallas, which regulated sexually oriented businesses.

There are several critical similarities between the Dallas ordinance and Citrus County Ordinance 88-05.

The Dallas ordinance was struck down as being violative of the First Amendment, on the grounds that it constituted a prior restraint upon protected expression, and that it failed to provide adequate procedural safeguards as required by Freedman v. Maryland, 380 U.S. 51 (1965).

This Court used the analogy that, like a censorship system, a licensing scheme creates the possibility that constitutionally protected speech will be suppressed where there are inadequate procedural safeguards to ensure prompt issuance of a license. This Court held that a license for a First Amendment protected business must be issued in a reasonable period of time and, therefore, the first two Freedman safeguards are essential.

In the Dallas ordinance, there was a requirement that the Chief of Police approve the issuance of a license within 30 days after the receipt of an application, and also conditioned such issuance upon approval by other municipal inspection agencies without setting forth time limits within which those inspections must occur. Since the ordinance failed to set forth an effective time limitation on the licensing decision, and since it also failed to provide an avenue for prompt judicial review so as to minimize suppression of speech in the event of a license denial, its licensing requirement was unconstitutional.

Citrus County Ordinance 88-05, in § 2-5 (a)(1), "Time Period for Granting or Denying License", places a forty-five (45) day limit after proper filing to process an application with the County Administrator. Subsection (c) of the section provides, just like the Dallas ordinance, that denial can be conditioned on any disapproval of other local government inspection agencies, namely (as set forth in § 2-4(a)), the Department of Development Services, Fire Protection, and the Health Department.

Under Florida law, forty-five (45) days is adequate time to pass a zoning

In recognizing the fact that a licensing scheme creates the possibility that constitutionally protected speech will be suppressed where there are inadequate procedural safeguards to insure the prompt issuance of a license, this Court found that the absence of these procedural safeguards would result in legislation which was facially unconstitutional.[17] Id.

---

ordinance, which in actuality Citrus County did, resulting in zoning non-compliance for the anticipated premises of Respondent's business.

Section 2-4(a) of Ordinance 88-05 states only that:

> "... Each department shall promptly conduct an inspection of the applicant, application and the proposed establishment in accordance with its responsibilities ..." Ordinance 88-05, § 2-4(a).

Clearly, just like the Dallas ordinance, Citrus County places no specific time limitation on the County's inspection agencies other than the vague suggestion that they be "prompt". In addition to this infirmity, allowing an applicant to begin operation pursuant to § 2-5(a)(1) after the expiration of the forty-five (45) day period, "unless and until the County Administrator notifies the applicant of a denial of the application and states the reasons for the denial" results in inadequate procedural safeguards under this Court's prior decisions.

The forty-five (45) day approval period leaves an applicant vulnerable not only to penal sanctions for any County code or regulatory violations which may occur during the interim between submission and approval or denial, but is also compounded by other infirmities in the ordinances.

[17]Section 2-11 provides for the suspension of a license for a variety of alleged local government regulatory violations. This section states that:

> "The Department shall promptly notify the licensee of the violation and shall allow the licensee a seven (7) day period in which to correct the violation. If the licensee fails to correct the violation before the expiration of the seven day period the Department shall notify the County Administrator, who shall forthwith suspend the license, and shall notify the licensee of the suspension. The suspension shall remain in effect until the Department notifies the County Administrator in writing that the violation of the provision in question has been corrected."

Clearly, by not limiting the time in which the Department must notify "in writing" the County Administrator, this infirmity would also invalidate the ordinance under the FW/PBS Inc. decision. Not only do these subtle "loopholes" allow unbridled administrative discretion, the entirety of § 3 of the ordinance, which imposes an

Another critical flaw brought to the attention of the state courts involved the second required procedural safeguard set forth in Freedman, supra: expeditious judicial review. As stressed in the FW/PBS, Inc. case, the existence of this prompt judicial review is absolutely essential. FW/PBS, Inc. cites not only Freedman, supra, but also Shuttlesworth v. City of Birmingham, 394 U.S. 147, 89 S.Ct. 935 (1971) (at 155) for the proposition that a content-neutral time, place and manner regulation must provide for "expeditious judicial review".[18]

In Blount v. Rizzi, 400 U.S. 410 (1971), this Court held that administrative hearings similar to those set out in the Citrus County ordinances came nowhere near the standards required for "judicial review". The Court found that an administrative censorship scheme created by the

---

additional permitting provision on any potential employee, emphasizes even more the extent to which the ordinance in question is unconstitutional.

[18]See also, National Socialist Party v. Skokie, 432 U.S. 43 (1977).
Section 6, titled "Miscellaneous Provisions" provides in § 6-1 - Appeals:

"(1) Within fifteen (15) days of the mailing of a notice of denial of an application for a license or permit or a notice of suspension or revocation of a license or permit, the aggrieved party may file a notice of appeal with the Board.

"(2) The notice of appeal shall be filed with the Clerk of the Board. The notice of appeal shall be accompanied by payment of a filing fee of fifty dollars ($50.00) to cover administrative costs. Upon receipt of the notice of appeal and upon payment of the accompanying fifty dollars ($50.00) filing fee, the Clerk shall schedule a hearing for as soon as the Board's calendar will allow. The Clerk shall provide the appellant with at least ten (10) days notice of the time and place for the hearing." Ordinance 88-05, § 6-1; 6-2.

Not only does this section crumble from the weight of Constitutional scrutiny when the vague period of time "as soon as the Board's calendar will allow ..." is tested against the previous points and authorities contained herein, but it also fails the second part of the Freedman test. The review afforded in § 6 is insufficient.

Postal Reorganization Act and allowing the Postmaster General, following administrative hearings, to effectively decide which materials be afforded First Amendment protections, was totally unacceptable.

As a fundamental right, freedom of speech demands due process to be regulated, and the amount of process "due" was held to be of the strictest judicial requirement. The Court held that because only a judicial determination in an adversary proceeding ensures the necessary sensitivity to freedom of expression,only a procedure requiring a judicial determination suffices to impose a valid final restraint. Id. at 424.

The Citrus County ordinances at issue herein are clearly unconstitutional. The failure to include adequate procedural safeguards on the face of these ordinances make them invalid. The preclusive effect of the full faith and credit clause may not be given in Federal court to a constitutionally infirm judgment.[19] The Petitioner's arguments are neither meritorious nor compelling, and this Court should decline to exercise its discretion in this matter.

II. THE COURT OF APPEALS PROPERLY REJECTED THE PETITIONER'S ARGUMENT THAT THE *ROOKER-FELDMAN* DOCTRINE REQUIRES ABSTENTION OF RESPONDENTS' CONSTITUTIONAL CHALLENGES TO THE PROVISIONS OF 88-06.

The Rooker-Feldman doctrine, which stems from the

[19]If there is reason to doubt the quality, extensiveness or fairness of procedures followed in prior litigation in state court, redetermination of issues in federal court is warranted. Morgan v. City of Rawlins, 792 F.2d 975 (10th Cir. 1986).

two Supreme Court decisions Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed 362 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983), is misapplied in the instant case. The *Rooker-Feldman* doctrine interprets 28 U.S.C. § 1257 as ordinarily barring direct review in the lower federal courts of a decision reached by the highest state court, for such authority is vested solely in this Court.[20]

It is also clear that a consideration of 28 U.S.C. § 1257 triggers consideration of full faith and credit.[21] (See discussion in previous section). The Petitioner urges that the court of appeals failed to adhere to the principles of the *Rooker-Feldman* doctrine by considering provisions of 88-06. As the court of appeals properly recognized, there are several substantive differences between 88-05 and 88-06.[22]

Because these considerations involve entirely different ordinances, and also because no decision was ever reached or presented to the Florida Supreme Court, the *Rooker-Feldman* doctrine has no application in the instant case. Respondents would also urge that cogent considerations of the facial unconstitutionality of the ordinance (not only as

[20]ASARCO, Inc. v. Kadish, 490 U.S. 605, 622, 109 S.Ct. 2037, 2048, 104 L.Ed.2d 696 (1989).

[21]Allen v. Allegheny Co., 196 U.S. 458, 25 S.Ct. 311, 49 L.Ed. 551 (1905); Johnson v. New York Life Ins. Co., 187 U.S. 491, 23 S.Ct. 194, 47 L.Ed. 273 (1903); Western Life Indem. Co. v. Rupp, 235 U.S. 261, 35 S.Ct. 37, 59 L.Ed. 220 (1914).

[22]Redner v. Citrus County, 919 F.2d at 650, n.9.

applied to the concepts of abstention and full faith and credit) would indicate that a deprivation of the federal courts to address the clear federal questions involved in this case would continue the pattern of prejudice which has been imposed on Respondents.

In light of the points and authorities presented by the Respondents and the undeniable fact that the bases asserted by Petitioner to invoke this Court's discretionary review are all interrelated. The Petitioner has failed to show adequate in this context for the granting of the writ.

----------O----------

CONCLUSION

For the reasons discussed herein, this Court should decline to exercise its discretionary jurisdiction in this matter.

Respectfully submitted,

/s/ Luke Charles Lirot
LUKE CHARLES LIROT

THOMAS C. LITTLE, P.A.
2123 N.E. Coachman Road
Suite A
Clearwater, Florida 34625
(813) 874-2030

Attorney for Respondents